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Betty Jean Meyer  
*Old Dominion University*

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THE LEGISLATIVE PROCESS IN THE VIRGINIA GENERAL ASSEMBLY:

TEN CASE STUDIES OF ENVIRONMENTAL LEGISLATION

PROPOSED BY HAMPTON ROADS CITIES

by

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B.S. June 1974, Old Dominion University

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A Dissertation submitted to the Faculty of  
Old Dominion University in Partial Fulfillment of the  
Requirement for the Degree of

DOCTOR OF PHILOSOPHY

URBAN SERVICES

OLD DOMINION UNIVERSITY

December, 1991

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Dr. Leonard Ruchelman

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Dr. G. William Whitehurst

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ABSTRACT

THE LEGISLATIVE PROCESS IN THE VIRGINIA GENERAL ASSEMBLY:  
TEN CASE STUDIES OF ENVIRONMENTAL LEGISLATION  
PROPOSED BY HAMPTON ROADS CITIES

BettyJean Meyer  
Old Dominion University, 1991  
Director: Dr. Wolfgang Pindur

This study addresses the following two questions: (1) How does the Virginia General Assembly process bills which are proposed by local governments in Virginia? and (2) Are there identifiable factors in this legislative process which could be impacted by local governments to influence legislative outcomes? These questions are addressed by focusing on ten case studies of environmental issues contained in legislative proposals of six cities in Hampton Roads Virginia for the 1987, 1988, and 1989 sessions of the General Assembly. The case data were compiled from records of the General Assembly, media accounts, and interviews with 19 legislators and other legislative actors and observers. The cases represent both issues which gained the desired legislation and those which did not. Through the case study results and interview data specific factors are identified which affect the outcome of legislative initiatives. Most prominent among these are: Committee support; Perceived saliency; Support of the governor; and the regulatory and precedent setting content of the bill. These factors are analyzed to provide conclusions as to what steps local government policy makers can take to improve legislative outcomes.

To God, the Glory

## ACKNOWLEDGEMENTS

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## GLOSSARY OF TERMS

**Co-patron:** A legislator who signs a proposed bill as a supporter of the bill and who may be counted on for some support of the bill. Co-patronage allows legislators to show support for an issue of interest to their constituency without having to introduce their own bill and thus increase the number of bills to be processed.

**Dillon's Rule:** A rule based on a court ruling by 19th century Judge John F. Dillon which holds that all powers granted to localities are delegated by the state. States, such as Virginia, operating under this rule allow local governments to exercise only those powers provided through state legislation or through the city charter of the specific locality. This requires that local governments in Virginia receive enabling legislation or charter authority for every activity of local government from raising revenues to regulating trash collection.

**en bloc:** This procedure is used in the Virginia Senate with items on the Uncontested Calendar to allow bills and resolutions to be considered as a bloc, requiring only one vote to act upon the entire bloc. Voting en bloc streamlines action on uncontested bills and resolutions on the floor on the Senate by recording votes and actions on a group of bills and resolutions at one time. No similar mechanism exists in the House.

**Legislative proposal/legislative program:** A document or letter from a local government, lobby, or interest group laying out the issues which the group supports or on which the group wishes legislative action to be taken or not taken. The document usually includes some background information on the issue from the submitting group's perspective, and urges a course of action for the legislators. The document is sent to a group of legislators but there is no requirement that legislators support any or some of the issues. The documents are used by legislators to identify items of interest to their various constituencies and to gather data on an issue.

**Long Session:** The session of the Virginia General Assembly held in even numbered years and limited by the Constitution of Virginia to sixty days with a potential for a thirty day extension. In that the General Assembly convenes the second Wednesday in January and the long session ends the second Saturday in March, there is not a full ninety days activity in this session. The long session is that in which the biennial budget is adopted.

**Passed by Indefinitely:** An action on a bill in committee which neither formally kills the bill nor forwards it to the floor. Unless a patron can have the issue brought up again by the committee, this procedure usually has the same affect as a vote against the bill.

**Patron (sponsor):** The legislator who takes initiative to have a bill or resolution introduced by requesting the Division of Legislative Services to draft a bill, and then having the bill entered on the calendar of the chamber of which the patron is a member. The patron usually also supports the bill by urging other legislators to co-patron the bill, by speaking for the bill before committees, and by encouraging support for the bill among other legislators.

**Short Session:** The session of the Virginia General Assembly held in odd numbered years and limited by the Constitution of Virginia to thirty days with a potential for a thirty day extension. In that the General Assembly convenes the second Wednesday in January and the short session ends the last week in February, there is not a full sixty days activity in this session.

**Uncontested calendar:** A list of bills and resolutions which were reported unanimously by a committee of the Senate and to which there is not perceived objections. If objections arise to a specific item, a senator may request that a bill or resolution be removed from the Uncontested Calendar at any time.

**Voice vote:** A voting mechanism which does not record the vote of each senator. It is used on non-controversial procedures or bills to expedite floor proceedings.

## CHAPTER 1

### INTRODUCTION

The cities of Hampton Roads, Virginia, like many cities in the United States, face a myriad of issues and challenges which are integrally tied to the governance of the state in which they lie. Whether the issue is grants of power from the state, provision of state funding for local programs, or the burdening of local government with state and federal mandates, American cities are both dependent upon and subject to state legislative action in many arenas of local governance. While this relationship is an integral component of federalism, the past ten years have seen a shift to local governments of an increasing portion of the burden for provision of services and implementation of state and federal mandates. This trend is expected to continue, given the federal deficit and the financial constraints which many states, including Virginia, are facing. The transfer to local government of service responsibility is exacerbated by reductions in state aid to localities. Given the economic forecast for the next several years and the increasing local demands for new and enhanced programs from constituents across the state, the importance to localities of state-local relations cannot be understated.

Local governments in Virginia articulate their legislative agenda for annual sessions of the General Assembly through a document known as

the legislative proposal of the city or county. This proposal includes background information on key issues and recommendations for action.

This research studies the problem of limited legislative success by examining environmental issues included in these legislative proposals for six cities of Hampton Roads during three recent legislative sessions. The research describes the legislative process by which the General Assembly handles these legislative initiatives and identifies what factors in the process affected legislative outcomes. These data allow the following questions to be answered:

1. Are there factors in the legislative process of the Virginia General Assembly which affect the likelihood of passage of an item in legislative proposals of local government?
2. Do these factors create a pattern across multiple observations so that a compelling case is created for local government officials to change the way they present and pursue legislative initiatives?
3. Are these factors specific to particular localities or issues, or do they affect most types of legislative proposal items presented to the General Assembly?

Answers to these questions can assist local governments in improving the outcomes of their legislative proposals. Given the problems facing local governments, such improvements should enhance the general operation of local government.

### Background

The State of Virginia is governed by a bicameral legislative body known as the General Assembly. The upper chamber, the Senate, is made up of 40 senators elected for four year terms. The lower chamber, the House of Delegates, is made up of 100 delegates elected for two year terms. The governor is elected for a four year term and cannot succeed himself.

The senators and delegates are, in keeping with the Jeffersonian tradition, citizen legislators. That is, they have primary employment in their home communities and devote only part of their time to the business of governing. This limitation on legislative activity dates to the Constitution of Virginia of 1851<sup>1</sup> which limited sessions of the General Assembly to 90 days every two years. The 1971 Constitution of Virginia, Article IV, Section 6 allowed annual sessions but limited such sessions to 60 days in even numbered years and 30 days in odd numbered years. A 30 day extension is allowable for each session. This places Virginia among states with the shortest legislative session. In fact, in a list of state 1991 legislative sessions published by the National Conference of State Legislatures,<sup>2</sup> Virginia had the shortest 1991 legislative session in the country, followed closely by the states of Utah and Wyoming. Virginia's even numbered year sessions are comparable in length to eight states, leaving 39 states plus the District of

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<sup>1</sup> Thomas R. Morris and Larry Sabato, Virginia Government and Politics: Readings and Comments, (Charlottesville, Va: University of Virginia Institute of Government and the Virginia Chamber of Commerce, 1984), 79.

<sup>2</sup> Information provided by Clerk of the Senate of Virginia in a table entitled "National Conference of State Legislatures: 1991 Regular and Special Dates as of 3/19/91."



Columbia with longer legislative sessions than Virginia's long session. Since the governor's position is full time, he governs the state during most of the year. This gives him significant power.

These limited sessions of the legislature require that constituency groups seeking legislative action formulate and present legislative proposals during a narrow time frame each year. While lobbying for an issue may occur throughout the year, legislative action must be accomplished in January and February in odd numbered years and January, February, and March in even numbered years. Any proposed bill must be entered on the calendar of the chamber in which it is introduced within the first two weeks of the session. In that hundreds of bills are drafted each year, requests for drafts and redrafts must be received by the Division of Legislative Services within the first week of the legislative session. Many legislators prefile bills by having Legislative Services draft bills prior to the commencement of the session so that the bills are placed on the calendar at the beginning of the session.

Local governments in Virginia are a large constituency group affected by this critical legislative time schedule because they must identify critical issues which require action of the General Assembly and present them to the legislature within the limited Assembly session each year. The failure of local governments to obtain needed legislative action can delay solutions to local problems for a year or longer. In this time, problems can be exacerbated or momentum for a program can be lost. Items which request state funding (such as state aid to education, health services, and corrections support) are even more

problematic because of the biennial nature of the state budget. While some amendments are made in the second year of the biennium, few new initiatives are included in such amendments. This means that a locality's failure to influence positively a legislative proposal item needing state funds will result in a two year delay in program action and related problem resolution. In urban and suburban areas, where two years can bring an additional 10,000 residents and a two year delay in infrastructure improvement (which could cause a major business to locate elsewhere), the need for effective and timely legislative action is apparent.

In Virginia, the importance of successful legislative action is rendered more acute by the state's adherence to "Dillon's Rule," a legal concept established by nineteenth century Judge John F. Dillon which reserves all power to the state.<sup>3</sup> Under this rule, the General Assembly reserves to itself all powers not expressly denied by the state or federal constitutions. Residual powers do not lie with local governments. Rather, local governments must be granted specific powers by the General Assembly either through the charter of the local government or through acts of the General Assembly. The practical result of this is that localities must seek General Assembly action on local authority issues as diverse as land use regulation, salary levels for public officials, taxing authority, and local regulation (e.g., smoking bans).<sup>4</sup> These actions are in addition to the requests for funding of local

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<sup>3</sup> Bill Wood, "Dillon Rule: How a 19th century Iowa judge affects your life," Norfolk Virginian-Pilot and Ledger-Star, 10 April 1988, sec. C, 6.

<sup>4</sup> "'Home rule' in Virginia," Norfolk Virginian-Pilot, 8 February 1989, sec. A, 6.

programs, support of state programs which affect the locality (e.g., higher education), and support of intergovernmental programs (e.g., education, transportation).

The various legislative needs of individual cities or counties in Virginia are contained in their annual legislative proposal to the General Assembly. These proposals include background information on key issues and recommendations for action. The source of these proposals can be citizen requests to local government, local government staff, or members of local councils, or council appointed committees (e.g., planning commissions, arts commissions). For the most part, development of the background data and supporting documents are completed by local government staff with input from the council or their appointees.

In most localities these proposals are approved by local governing bodies and forwarded to the legislative delegation of the locality. In formal meetings and through informal consultation, the members of the legislative delegation are asked to sponsor legislation or support legislation which would forward the issues outlined in the proposals. In addition, the proposal guides lobbying efforts of local elected officials, local government staff appearing before legislative committees, and paid liaisons/lobbyists of the local government.

In some instances, the proposal takes the form of a summary letter to members of the delegation, outlining key issues of concern to the local council. In these cases, the more formal proposal document with supporting information is not prepared, or is prepared as a document for use only by city staff and policy makers. Which form is used varies over time, the preference of the sitting council, their perception of

the efficacy of a formal proposal, and the number of issues to be considered.

#### The Problem Under Study

In reviewing these proposals over several years for a given locality, there are often issues repeated in more than one year. Comparing the list of issues requested in the proposals to summaries of General Assembly action, it is apparent that many items are not passed in the first year in which they are proposed. Indeed, many items in a legislative proposal are never enacted by the legislature. One city council member was quoted as saying "I guess I don't understand the legislative process"<sup>5</sup> after a proposal with strong council backing was never introduced as proposed legislation, despite a meeting of the council with local legislators to discuss the issue. Given the dependence which local governments in Virginia have upon the General Assembly for grants of power, the failure to gain action on items in the legislative proposal can hamper local governments' ability to address problems and to plan future programs.

The critical importance of local governments' success in the state legislative process has been heightened by the trend of reductions in federal funding and programs for local needs. This shift has increased the power and importance of the states. State legislatures have recently been described as "where the big issues are being decided."<sup>6</sup>

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<sup>5</sup> Marc Davis, "Beach's requests on tax, signs die quietly for lack of a sponsor," Norfolk Virginian-Pilot and Ledger-Star, 16 January 1988, sec. B, 5.

<sup>6</sup> Alex Marshall, "Few following election; fewer think it matters," Norfolk Virginian-Pilot and Ledger-Star, 15 September 1991, sec. B, 1.

This research examines the legislative process in the Virginia General Assembly through case studies of ten environmental issues included in the legislative proposals of six Hampton Roads cities during three sessions of the Virginia General Assembly. Environmental issues were chosen for the focus of this study because:

1. Environmental issues are of importance to the Hampton Roads area because of the sensitive natural environment in which the area is situated. In addition, the increasing federal and state environmental mandates place a significant financial and economic development burden on the areas.

2. Local government policy positions on environmental issues, unlike many social policy issues, would not be strongly impacted by the socio-economic characteristics of the locality.

3. Each of the six Hampton Roads cities under study had environmental issues among their legislative agenda items during the three General Assembly sessions under study.

Conclusions are drawn regarding what factors affect the passage or non-passage of items of legislative interest to local governments. These conclusions are based on the findings of the case studies, as informed by literature on the legislative process, and documented by secondary data sources and interviews with key legislative actors and observers. The conclusions serve as a basis for recommendations for ways in which Hampton Roads cities and other cities can increase the likelihood of favorable legislative outcomes for needed legislation or, in cases where factors cannot be impacted, enable local policy makers to identify those issues which have a limited likelihood of passage.

In addition to providing insight as to what factors influence various legislative outcomes in the Virginia General Assembly, this study provides data to support much of the findings in the literature on the legislative process in the American states. It also identifies issues of interest for future study, both in Virginia and other states.

#### The Research Question

The questions this research seeks to answer are: (1) How does the Virginia General Assembly process bills which are proposed by local governments in Virginia? and, (2) Are there identifiable factors in this legislative process which could be impacted upon by local governments to influence legislative outcomes?

More specifically, the research studies the success or failure of environmental issues of legislative proposals of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach for the years 1987, 1988, and 1989. Through the study of these issues, this research seeks to disprove the null hypothesis that there are no identifiable factors which explain why an environmental issue proposed for General Assembly action succeeds or fails. A corollary to this hypothesis is that there are no identifiable factors which would help predict the outcome of a particular item of a legislative proposal.

Propositions arising from the research question, as identified by Browne,<sup>7</sup> Hamm and Moncrief,<sup>8</sup> are as follows:

- Five or more co-patrons for a bill increases its likelihood of passage.
- Patronage by a diverse group of legislators representing a cross section of localities increases the likelihood of bill passage.
- A bill whose patron is a legislator with status (e.g., leadership in party, seniority in the legislature) will increase its likelihood of passage.
- Referral of a bill to a committee with a heavy workload will increase the likelihood of bill failure or delay.
- The committee to which a bill is referred will affect its likelihood of passage because some committees tend to strike, amend, or veto more bills than other committees.
- When no interest groups or state agencies show support for a bill, it is more likely to be postponed.
- Strong interest group support for a bill increases the likelihood of passage. Conversely, strong interest group opposition to a bill will decrease likelihood of passage.
- An item placed before the legislature as part of the governor's budget or legislative initiative is more likely to be passed.

These propositions are drawn from the literature on the legislative process at the state level in the United States and from preliminary interviews with legislative liaisons in local governments in Hampton Roads.

While there is a wide variety of legislative outcomes which can characterize a given issue, the broad terms "passed" and "failed" are

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<sup>7</sup> William P. Browne, "Multiple Sponsorship and Bill Success in U.S. State Legislatures," Legislative Studies Quarterly 10 (November 1985): 484.

<sup>8</sup> Keith E. Hamm and Gary Moncrief, "Effects of Structural Change in Legislative Committee Systems on their Performance in U.S. States," Legislative Studies Quarterly 7 (August 1982): 384.

used in general discussion in this research because these are the terms used by local government in speaking of proposed legislative initiatives. "Passed" applies to those issues for which some action is taken to fulfill the intent of the legislative initiative. Such action may be passage of a separate bill, amendments to another bill, amendments to the budget document, or amendment to regulations. This concept is generally consistent with the measurement of legislative effectiveness provided by Hamm and Moncrief<sup>9</sup> which considered effective actions those in which the legislative item passed without significant change.

"Failed" applies to any action which does not fulfill the intent of the initiative. This includes actual failure of a bill or amendment dealing with the issues, and also includes passage of a bill which deals with the issue but significantly alters the intent. Whether intent has been fulfilled is based on the background data provided in the legislative proposals of the cities and, where necessary, discussions with legislative liaisons of the cities.

#### Scope and Limitations of the Study

As mentioned above, the purpose of this research is to describe and study the legislative process in Virginia, specifically as it is viewed by cities in the Hampton Roads area. While the legislation to be studied deals with environmental issues in legislative proposals of the Hampton Roads cities, the study is not intended as a review of environmental legislation but, rather, that legislation is used to provide a common focus on the legislative process, actors, and outcomes. Given

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<sup>9</sup> Hamm and Moncrief, "Effects of Structural Change," 388.



this focus on process, this study does not seek to be an exhaustive study of all environmental legislation proposed in the three years under study, nor does it propose to evaluate the merits or impacts of the proposed legislation in its environmental context.

Because of the lack of archival data in the form of proceedings of the General Assembly, heavy reliance was placed on the results of the interviews and on media accounts of legislative outcomes. The Virginia General Assembly does not keep minutes of proceedings of committee meetings. Debate, votes, and actions on the floor of the House of Delegates and of the Senate are recorded in the journals of those chambers and the vote by which a committee reported a bill to the floor is recorded. Daily calendars of the General Assembly provide committee votes, by legislator, on a given bill. Not recorded are: which legislators spoke for or against a bill, what the content of such comments were, what lobbyists or state staff spoke for or against a bill, and what the content of those comments were. No data are reported on subcommittees except votes of reports to committees. In that the bulk of the work of the General Assembly is performed in committee, the lack of such records limits studies to qualitative approaches.<sup>10</sup>

#### Importance of this Study

As noted above, the findings of this study are of general interest to local governments in assisting them in improving outcomes of items in

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<sup>10</sup> A comment which is revealing of this limitation was made by a staff member of the Clerk of the Senate's office during a data collection visit made to the State Capitol on May 22, 1991. This researcher, upon explaining the purpose of the visit, was asked how the legislative process in Virginia could be studied when no records were kept.

their legislative proposals to the state legislature. The findings are of specific interest to policy makers in the cities of Hampton Roads for a number of inter-related reasons described below.

1. The cities of Hampton Roads are facing increasing demands brought about by growth and development at a time when taxing capacity is approaching legal and financial limits and when federal resources are constant or declining.

2. To address these growing demands, the cities must turn to the state for financial assistance or must seek greater flexibility in program implementation and in revenue generation. Since Virginia is a Dillon's Rule state, new revenue authority must be explicitly provided to the localities by the state.

3. Given the problems outlined in items 1 and 2 above, it is critical that the cities be able to effectively present, lobby for, and gain passage of legislative proposals which they put forth. Failure to achieve this affects the local governments' ability to deal with growth issues.

Their success in influencing legislation which would assist them in dealing with these and other problems has been moderate. As noted above, some lessons can be learned from the legislative successes of cities and counties in the northern part of the state. However, given the different blend of industry and business, the difference in the operation of an independent city and a county in Virginia, changes in the intergovernmental environment since the urbanization of northern Virginia, and the sensitive natural environment in which Hampton Roads exists, the cities in Hampton Roads are better served looking at their

own successes and failures to mold a strategy for the future. This study seeks to provide data to inform that strategy.

In addition, this study seeks to contribute to the general understanding of legislative actions in state governments as it is described in the literature on the legislative process. This literature has focused on factors which affect legislative outcomes primarily through analysis of final votes on issues. Patterson found these to be of limited use in viewing what really affects policy outcomes.<sup>11</sup> He recommended that a better way to discern what influences policy decisions was to ask the legislators. This study uses Patterson's recommendation and asks legislators and other policy actors what affects legislative outcomes. As such, it will add to the limited data on state legislative processes from interview sources.

Many studies of state legislatures have been conducted in states with longer "full time" sessions that have legislators whose primary occupation is that of governance. This study will provide data on a state with a part time citizen legislature. These data can be used to provide a contrast to those studies of full time legislatures and a comparison to those states with sessions similar in length to Virginia. Factors identified in this research as important to legislative outcomes support those identified in the literature, thus validating the factors for an increased number of legislatures. This research also identifies further areas for study of the legislative process.

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<sup>11</sup> Samuel C. Patterson, "American State Legislatures and Public Policy," In Politics in the American States: A Comparative Analysis, 3rd ed., ed Herbert Jacobs and Kenneth N. Vines, (Boston: Little, Brown and Company, 1976): 185.

Outline for the Study

In the next chapter, the literature informing the legislative process in the United States, with particularly focus on the states, is reviewed. Emphasis is placed on case studies in the literature and on the findings of the more quantitative studies in an effort to maintain the focus on the process of state legislative action, rather than on specific policy outcomes. While many sources from the 1960's were reviewed, care was taken to consider these in perspective of the nationwide reform which occurred in state legislatures from the mid-1960's through the early 1970's. As a result of these reforms and of societal changes as a whole, the environment of state legislatures today is significantly different than that of three decades ago, thus limiting the ability to generalize results of these earlier studies to today's legislative issues.

Chapter 3 discusses the research methodology used for this study and discusses data collecting techniques, data sources accessed, and how the data are analyzed to draw conclusions regarding the legislative process in the Virginia General Assembly.

The findings of the study are presented in Chapter 4, with each of the ten legislative issues used as focus for this research presented as a separate case study with legislative histories, results and conclusions drawn from each case. The cases are then viewed in composite to summarize findings of the study as a whole and to provide a process focus, rather than issue focus.

Chapter 5 draws upon the findings of Chapter 4 and the research outlined in Chapter 2 to describe the results of this study relative to

the existing body of knowledge surrounding the state legislative process and to examine and seek to explain any variations in the findings of this study with concepts supported by the literature. Conclusions regarding the legislative process are drawn and, in keeping with the urban problem-solving intent of this study, recommendations are made for elected or governmental actors in the urban environment to address legislative outcomes in dealing with their state legislatures.

## CHAPTER 2

### REVIEW OF RELATED LITERATURE

The concern over outcomes of legislative proposals of the local governments of Virginia forms the basis for this inquiry. This study seeks to identify factors which affect the outcome of issues in legislative proposals with the goal of providing some insights as to how legislative initiatives of localities might receive more positive action from the General Assembly.

#### The Legislative Process

The General Assembly, convening in January of each year, considers legislation on a wide spectrum of issues. In order for a legislative item to come before the General Assembly it must be introduced by either the governor or a legislator who acts as patron of the bill.

Proposed legislation is drafted by the Division of Legislative Services based on requests received from legislators. After drafting, the patron presents the bill in the chamber of which he is a member and it is placed on the calendar. After formal placement on the calendar the bill is referred to the appropriate committee. No bill can be considered by the General Assembly without having first received a recommendation from a committee.

The committee considers the bill, hears testimony on the bill, recommends any amendments and votes as to whether the bill should be reported to the floor of the chamber. If the committee does not report the bill, it dies with the session unless it is carried over to the next session. If the bill is reported, the chamber considers the bill and votes for or against it. If the bill is approved it is forwarded to the other chamber of the General Assembly where it again is referred to committee before floor action. If both chambers approve the bill it is forwarded to the governor for signature.

The bill can fail in the committees of either chamber, on the floor of either chamber or on the governor's desk. An average of 2,000 bills are introduced in a session and approximately one-third are enacted into law. This study seeks to identify what factors in this process determine which of the 2,000 bills succeed.

In reviewing the literature, there are numerous factors identified which can contribute to the success or failure of a proposed item of legislation. These include:

1. The level of support for the issue. Support has a number of facets, as follows:

- Number of patrons supporting an item, status of patrons, and breadth of representation of patrons,
- Number and strength of interest groups supporting or opposing the issue,
- Governmental agency support for the issue, and
- Gubernatorial support for the issue.

2. The timing of the issue in the following terms:

- Current state or national interest in the issue (e.g., AIDS education or environmental legislation),

- Election cycles which may cause key players to support, oppose, or remain non-committal on an issue in a given year, and
- Fiscal cycles which may affect the availability of funding for a specific issue or for new initiatives, in general.

3. Scope or effect of requested action on the issue. The scope of an item can fall under several different categories, as follows:

- Provides local government with authority for a specific action or program (including taxation). This may be specific to one locality, to a group of localities (e.g., cities over 100,000 population), or may be applicable to all local governments,
- Requests specific action or support for a state or local program (e.g., schools, public safety, human services, environment), and
- Changes a general state law (e.g., speed limits, gun control, licensure of barbers).

4. The nature of referral to the various committees.

- Committees with heavy agendas tend to reject or table more bills than do committees with lighter workloads.
- Some committees generally look more favorably on certain issues than do other committees.
- Some issues may never be referred from the floor of the legislative house in which it was introduced to committees or may be referred so late in the legislative session that the issues cannot receive adequate attention.

For this study, data were collected which would determine what part, if any, these factors played in the passage of specific items in the legislative proposals of select local governments in Virginia. Other key factors affecting legislative outcomes which may not have been identified in the literature are also documented. These data allow the following questions to be addressed:



1. Are there factors in the legislative process of the Virginia General Assembly which affect the likelihood of passage of an item in the legislative proposals of local governments?

2. Do these factors create a pattern across multiple observations so that a compelling case is made for local government officials to change the way they present and pursue legislative actions?

3. Are these factors specific to particular localities or issues, or do they affect most types of legislative proposal items presented to the General Assembly?

The theoretical framework from which these questions are drawn is in the literature on the legislative process in the states and, to the extent it explains or illustrates this, the legislative process in the national government. This literature includes both descriptions of the process by which legislation is enacted and insights into the factors affecting that process. These factors include a wide range of attributes of legislative actors, the legislative environment and other issues which have been found to bear on legislative outcomes in state legislatures. In this study, they are discussed under the four broad areas of (1) Environmental factors; (2) Political factors; (3) Institutional factors; and (4) The nature of the bill. The extent to which each of these factors is relevant to the Virginia General Assembly is assessed based on information available regarding the structure, function, and documented attributes of the General Assembly and the members and other actors involved in its actions.

Research on the Virginia legislative process since the Virginia Constitution of 1971 is not extensive. Moreover, while tapes and some

notes of proceedings of the committees and subcommittees of the General Assembly are taken during legislative session, transcriptions and notes are not printed and maintained as permanent records of the state. Therefore, much of the information pertaining specifically to the operation of the Virginia General Assembly is derived from newspaper reports of actions during the Assembly sessions of the past five years.

The literature sources described above served this study in the following three ways:

1. Directed the questionnaires which were used to interview members of the General Assembly, staff of the General Assembly, and other parties with perspectives on the legislative process in Virginia;
2. Provided focus for secondary data collection which was completed for the legislative issues under study; and
3. Provided a base of theory against which to compare the results of this study to similar studies and to offer possible explanations for variances in the findings of this study and data collected from other state legislatures.

#### Environmental Factors

Environmental factors are those which are outside the legislature but which impact the actions and outcomes of the legislature. While legislators in a representative form of government, in theory, vote for an issue in accordance with the desires of their constituents, most issues would elicit a variety of opinions (both for and against) from any but the most homogeneous constituency. As a consequence, a legislator's action on an issue is influenced by a variety of factors

including: (1) The saliency of a legislative issue to a constituency; (2) The availability of studies on the issue or other sources of data on the issue; (3) The proximity of a legislative election to the time of action on an issue.

#### Saliency of the Issue

Saliency is the perceived popularity, consequence, or importance of an issue to a legislator's constituency.<sup>12</sup> This is determined by the interest which an issue holds for the public and the impact which particular legislation may have on the constituency. Interest and impact vary with interest cycles and economic conditions. Taken together, these factors are often referred to as the legislative climate.

Legislative climate and legislative schedules were discussed by Jerome<sup>13</sup> as factors which cross cut other factors in the legislative process. For want of a more precise term, he described these factors as "time" and "timing." The concept of "time" is discussed further below under institutional factors. The "time is right" deals with legislative climate which can be affected by the convergence of factors, both external and internal to the legislature. The climate can be specific to the state constituency, can be national, or can be a perception of general support created by the media through publishing of timely stories. Often environmental or safety issues benefit or suffer from the perceived legislative climate surrounding an issue.

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<sup>12</sup> David E. Price, Policymaking in Congressional Committees: The Impact of Environmental Factors, (Tucson: University of Arizona Press, 1979): 45.

<sup>13</sup> Robert W. Jerome, U.S. Senate Decision-Making: The Trade Agreements Act of 1979. (New York: Greenwood Press, 1990), 134.

For actors seeking passage of a legislative agenda item, it is important to note the cyclical nature of climate because an issue for which the time is right in one legislative session may not enjoy the same climate the following session. An example at the national level is recent military developments in the autumn of 1990 which might have supported some military build-up due to the calling up of reserve units for war. Yet one year later--autumn of 1991--world events have changed so that the time is not right to request a military build-up.

These interest cycles are heavily influenced by economic cycles. The effect of economic conditions on policy is well illustrated in recent records of the Virginia General Assembly. In the late 1980's, new initiatives in transportation, human services, education, and corrections were begun with massive infusions of both available tax and lottery monies and through borrowed funds. This growth was fueled by the euphoria of a decade of substantial growth in the state economy. Beginning shortly after adoption of the 1990-92 State Biennial Budget, the economy turned down. This led to reductions in some programs and discontinuation of other programs which would have been unacceptable even two years earlier. Policy decisions which would have branded a legislator as insensitive in 1988, provide labels of "fiscally responsible" in 1991.

Because of their variability over time, the role of legislative climate and related economic cycles can be understated in legislative studies which center on a cross sectional analysis for one legislative session. The potential for change of saliency of an issue over time is of particular importance in states with limited legislative sessions

where legislators return to their communities for a large portion of the year. This allows time for the climate, economy, and constituency perception to change between introduction and final action on a bill. Treadway<sup>14</sup> argues that this is a strong reason to assess legislative policy over time, rather than at one point in time. This research addresses this concern by studying legislative issues which were introduced over a three year period. This allows for analysis of why an issue might have failed in one year but passed in subsequent years.

#### Studies and Information on an Issue

Gilligan and Krehbiel<sup>15</sup> found that legislators prefer to support policies with low levels of uncertainty as to outcomes. When such uncertainty is unavoidable, legislators rely on voting strategies to make decisions.<sup>16</sup> Ways in which uncertainty is lowered include undertaking studies of an issue and looking to experiences of other states<sup>17</sup> in dealing with the same or similar issues. In this manner, the legislator improves his knowledge of the issue and may gain a better understanding of the possible outcomes of a proposed bill. This information,

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<sup>14</sup> Jack M. Treadway, Public Policymaking in the American States (New York: Praeger, 1985), 169.

<sup>15</sup> Thomas W. Gilligan and Keith Krehbiel. "Asymmetric Information and Legislative Rules with a Heterogenous Committee," American Journal of Political Science 33 (May 1989): 461.

<sup>16</sup> Robin Farquharson, Theory of Voting, (Oxford, England: Basil Blackwell, 1969), 38.

<sup>17</sup> Treadway, Public Policymaking, 119.

coupled with his knowledge of constituency preference, lowers uncertainty and enables a legislator to take a position on a bill.

Gilligan and Krehbiel<sup>18</sup> found that individual legislators or a group of legislators may seek to increase their power by not sharing information on an issue. They found that withholding information on an issue could cost the issue votes because, if high uncertainty exists as to outcome or impact of a bill, legislators tend to vote against the bill. Sharing of information lowers uncertainty thus enabling a legislator to cast an unambiguous vote on an issue, rather than being forced to use other strategies to decide how to vote.

As legislative issues become more complex, the use of legislative studies is growing. These studies can be technical studies completed by legislative or executive branch staff, or may be studies conducted by special committees of the legislature comprised of both legislators and citizen representatives. The conduct of such studies usually takes place between legislative sessions, with results made available for study just prior to a session. While this delays action on an issue for one session, the lowering of uncertainty about the issue which the study reports increases the likelihood of informed action among legislators (rather than strategic voting behavior). The use of studies is particularly prevalent in technical areas such as environmental issues but is increasing in areas where a wide variety of options produce many possible policy outcomes (e.g., tax structures, funding formulas).

The Virginia General Assembly strengthened its ability to conduct studies with the creation of the Joint Legislative Audit and Review

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<sup>18</sup> Gilligan and Krehbiel, "Asymmetric Information," 461.

Commission in 1973. This commission, made up of seven delegates and four senators<sup>19</sup>, has a full time permanent staff which gathers data on a wide variety of issues for the General Assembly, as directed by resolution of the General Assembly.

#### Legislative Election Schedules

While studies have found that actual voter turnout at the polls has little affect on state policy outcomes,<sup>20</sup> the proximity of a legislative election has been found to impact policy outcomes.<sup>21</sup> This phenomena is attributable to the perception on the part of legislators that constituents may "remember" a vote on a particular legislative issue at the polls (or that an opponent might remind the constituency of how the legislator voted). This factor most often affects policy outcome by causing controversial issues to either not be introduced in an election year or to be tabled until after elections. It can also cause legislators to take up issues of interest to their constituency which had languished prior to election year.<sup>22</sup> This effect was more pronounced in legislatures with four year election cycles than in those with two year cycles. In the Virginia General Assembly, senators are elected quadrennially and delegates biennially, allowing comparison to be made of the

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<sup>19</sup> Morris and Sabato, Virginia Government, 80.

<sup>20</sup> Treadway, Public Policymaking, 93.

<sup>21</sup> *Ibid.*, 51.

<sup>22</sup> Duncan MacRae, Jr., Issues and Parties in Legislative Voting, (New York: Harper & Row, 1970): 202.

effect of elections on a legislative issue in the House and Senate in a given year.

### Political Factors

#### Executive Branch Influence

The power of the executive branch varies widely in its influence on legislative policy outcomes. Actual constitutional power and the length of legislative session determine the amount of executive power to some degree. In states, such as Virginia, with a part-time legislature, the executive branch prepares a budget, researches many legislative initiatives, and is responsible not only for implementing legislative initiatives, but for monitoring implementation, as well. Such latitude gives the executive branch power because the legislature lacks the time to study all proposed budget and policy items and offer viable alternatives in the short time the legislature meets. Nowhere was this more evident than in deliberations of the governor's budget amendments during the Virginia General Assembly 1991 Session. In that session, many legislators did not agree with the governor's proposed budget but lacked the time, resources, and the expertise necessary to provide alternatives. The result was the adoption of amendments which dealt with specific programs of interest but no large shifts in intent. This is consistent with Treadway's<sup>23</sup> findings that legislators generally support the executive budget because it usually represents a conservative incremental approach to policy making.

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<sup>23</sup> Treadway, Public Policy Making, 115.



A governor's ability to veto entire bills or individual line items in the budget also provides considerable executive power. The continuing national debate over presidential line-item veto is indicative of how much power there is in this privilege.<sup>24</sup> In states with part-time legislatures, the ability of a governor to veto a bill is critical because of the limited mechanisms available to override such a veto. In Virginia, the General Assembly re-convenes for three to ten days<sup>25</sup> to consider gubernatorial amendments and vetoes.

In non-budget areas, the governor can control policy merely by taking the initiative or failing to take the initiative in studying an issue. Graham<sup>26</sup> found this to be true in areas requiring technical expertise and study, such as science and technology. As Jewell observed of gubernatorial power, the "positive influence over legislation is considerable, his negative authority is massive."<sup>27</sup> Gubernatorial power is not, however, a constant. It varies with the personal attributes of the governor, the strength of the governor's political party, and the changes which may occur in both formal and informal balances of power between the executive and legislative branch. While any government with a balance of power between branches may see informal shifts over time,

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<sup>24</sup> James J. Gosling, "Wisconsin Item-Vote Lessons," Public Administration Review 46 (July/August): 292-300.

<sup>25</sup> The Constitution of Virginia, effective July 1, 1971 Article IV, Section 6, as amended to January 1, 1981.

<sup>26</sup> Cole Blease Graham, Jr., "Science, Engineering, Technology and Southern Legislatures," Southeastern Political Review 13 (February 1985): 216.

<sup>27</sup> Malcolm Jewell, The State Legislature: Politics and Practice, (New York: Random House, 1962), 109.

Virginia has seen an evolution in its formal balance of power throughout its history.<sup>28</sup> The response to royal governors resulted in an early state government with a weak executive. This shifted during the eighteenth century to a strong governor. With growth of legislative support functions in the past twenty years the balance is shifting once again. Overall, the executive branch is still seen as a strong force in Virginia and will probably remain so as long as the legislature remains one of part time "citizen" representatives.

#### Interest Group Support and Opposition

Interest groups and their power to impact policy outcomes have been extensively studied at both the national and state level. The influence of these groups is particularly strong when the various groups lobbying the legislature agree on what the policy outcome should be and several groups testify to support or oppose an issue. Hamm<sup>29</sup> found that when five or more groups spoke for a bill, the likelihood of its passage increased. Conversely, an equal number speaking against a bill will increase likelihood of failure.

In addition to the number of groups speaking for or against a bill, the extent to which an interest group represents the constituency

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<sup>28</sup> James Latimer, "Virginia's General Assembly: Study in Evolution of Democracy - American Style," in Virginia Government and Politics: Readings and Comments, ed. Thomas R. Morris and Larry Sabato, (n.p.: Virginia Chamber of Commerce and The Institute of Government, University of Virginia, 1984), 83.

<sup>29</sup> Keith Hamm, "The Role of "Sub-Governments" in U.S. State Policy Making: An Exploratory Analysis," Legislative Studies Quarterly 11 (August 1986): 322.

is also important in the power of the lobby. When legislators believe an interest group represents a large group of citizens, that interest group's view is weighted more heavily. This becomes more important when different groups present varying views of an issue. When this occurs, legislators are faced with the difficulty of finding a compromise which will meet the needs of both sides,<sup>30</sup> if possible. With numerous groups lobbying for an issue, it is also possible for a legislator to play the groups and their viewpoints against each other to excuse no action or widely divergent action in a policy area. Either of these possibilities weakens the power of the interest groups involved in the lobbying effort.

As more citizen interest groups (such as anti-growth groups, anti-gun lobbies) become involved in the legislative process, the likelihood of diverse views increases. While diluting the influence of any one group, the increase in the variety of groups participating in lobbying does tend to make interest groups more representative of the constituency at large, thus countering the criticism leveled at lobbies as a distortion of the electorate's will.<sup>31</sup> This level of representation could be considered a strength of the growing number of local governments who are hiring lobbyists to represent the views of their city or county to the state legislature as yet another voice of the electorate.

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<sup>30</sup> Treadway, Public Policymaking, , 106.

<sup>31</sup> Harmon L. Zeigler and Hendrik vanDalen, "Interest Groups in State Politics,": In Politics in the American States, ed. Herbert Jacob and Kenneth N. Vines (Boston: Little, Brown, & Co.: 1976), 105.

The influence which lobbies have over policy outcomes varies with issue areas. This is related, in part, to the complexity of an issue area. Lobbyists are indispensable in providing information to legislators in areas in which the legislators lack personal knowledge.<sup>32</sup> Given the limited time and staff research support available to part time state legislatures, legislators rely on interest groups to provide both technical information and information on potential impacts and options concerning the increasingly complex issues with which proposed bills deal. Professional lobbies and various executive agencies of the government clearly have an advantage in this regard. This advantage is becoming less pronounced as more citizen interest groups are realizing the importance of technical expertise in their testimony and are contributing resources to hire experts to perform research for their interest groups. In balance, Hamm<sup>33</sup> found that legislators did take into account the type of groups (e.g., interest groups, state agencies) when considering the various testimony presented regarding a policy issue. This provides a check against professional lobbies overwhelming citizen interest groups which may lack resources to provide a full time lobbyist or detailed research reports regarding an interest.

Regardless of the perception there may be of the strength of lobbying groups (particularly at the national level), they are one of the many determinants of policy outcomes in state legislatures. Other

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<sup>32</sup> Charles G. Bell, "Legislatures, Interest Groups and Lobbyists: The Link Beyond the District," The Journal of State Government, 59 (Spring 1986): 12.

<sup>33</sup> Hamm, "The Role of "Sub-Governments," 337.

factors, such as perceived saliency<sup>34</sup> can lead legislators to override the objections of an interest group and support a bill which will benefit the constituency as a whole.

#### Political Party Influence

The importance of political parties in the legislative process varies widely from state to state and over time. Policy outcomes may be determined by party platform or philosophy if one party is sufficiently strong to control both houses of the legislature and the governorship. As an example, Treadway<sup>35</sup> found that environmental, education, and welfare issues fared better under Democratic party control while business and highway issues fared better under Republican dominance. Strong party competition can lead to compromises which yield significant amendments to policies as introduced.

While the southern states are dominated by the Democratic party, Virginia ranks low in the strength of Democratic party power. This does not mean that the Republicans are more powerful. Rather, it comes about from Virginia citizens' tendency to be independent thus leading to close elections and frequent power reversals.<sup>36</sup> It also is due to an historic division of the Virginia Democratic party into two well organized and

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<sup>34</sup> Price, Policymaking in Congressional Committees, 45.

<sup>35</sup> Treadway, Public Policymaking, 88.

<sup>36</sup> Charles McDowell, "Virginia Politics: A Short Guide," Chapter in Virginia Government and Politics: Readings and Comments, ed. Thomas R. Morris and Larry Sabato (n.p.: Virginia Chamber of Commerce and The Institute of Government, University of Virginia, 1984), 52.

cohesive factions which act relatively independent of one another.<sup>37</sup> This situation denies consistent support to either party at a level which would undergird strategic power.

While party strength does not directly provide power for support of the state party platforms in Virginia, the use of party affiliation in determining leadership roles can impact policy outcomes.<sup>38</sup> In the Virginia General Assembly, seating assignments, appointment to committees and chairmanship of committees is determined by party affiliation. This clearly provides power to the dominant party in either chamber but can be weakened if opposite parties dominate the chambers or if the governor is of a different party than that dominant in the chambers. This arrangement where the Democratic Party controls key positions in the General Assembly but lacks cohesion to move on issues as a bloc leads to legislative action which does not frequently divide along Democratic-Republican lines.

#### Voting Strategies

One area of study which has received considerable attention at the national level is that of voting strategies used by legislators. Farquharson<sup>39</sup> studied voting patterns of legislators on a variety of bills and of patterns of a series of votes on one issue. He found that

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<sup>37</sup> Austin Ranney, "Parties in State Politics," Chapter in Politics in the American States: A Comparative Analysis. 3rd ed., ed. Herbert Jacob and Kenneth N. Vines (Boston: Little, Brown and Company, 1976), 85.

<sup>38</sup> Wayne Francis, "Leadership, Party Caucuses, and Committees in U.S. State Legislatures." Legislative Studies Quarterly, 10 (May 1985): 255.

<sup>39</sup> Farquharson, Theory of Voting, 17.

voting could be "sincere voting" on the part of the legislator, or could be based on a number of strategies which range from straightforward to complex. Sincere voting are those cases in which the legislator votes based on desired outcome of the vote; in other words, if the legislator favors the bill, he votes for it. Strategic votes are those in which the legislator tries to predict how other legislators will vote and cast a vote which will bring about a desired outcome. An example of such a strategy is when a legislator is against a bill which is popular with a part of his constituency but votes for it when he is sure there are not enough votes to carry it. In this manner, he curries favor with his constituency without participating in passing a bill he finds objectionable. Abstentions on close votes for controversial bills are also a commonly used form of strategic voting. In such a case, a legislator avoids casting a deciding vote on the issue.

While the above examples involve a legislator predicting votes and acting independently based on those predictions, other voting strategies depend on interacting with other legislators. The most common examples of these are log rolling--where a group of legislators agree to act as a bloc to affect the outcome of a bill--and vote trading--in which a legislator agrees to vote a certain way on a bill in support of a fellow legislator in exchange for that legislator's favorable vote on another bill. The coalitions which join in these strategies can be ongoing based on party or regional loyalties or can be issue based (e.g., pro-growth, anti-abortion). The commitment on the part of individual legislators can be to the issue through all amendments to the bill or can be limited to a symbolic first vote only. While some students of

the legislative process argue that such strategies undermine the democratic process, others argue that they may actually create more desirable legislative outcomes for society.<sup>40</sup> Whichever view one takes, there is agreement that such strategies occur in legislative bodies to varying degrees.

### Institutional Factors

#### The Committee System

Another determinant of policy outcome is the structure and importance of the committee system. Francis,<sup>41</sup> in classifying important decision making centers in state legislatures, found that both the House and Senate of the Virginia General Assembly fell into that group of legislative houses where committees and party leadership both served as centers of power. The power of committees in the Virginia General Assembly is undergirded by the constitutional requirement that every bill, prior to enactment, be "referred to a committee of each house, considered by such committee in session, and reported."<sup>42</sup> While the Rules of the Senate provide a fairly comprehensive list of what issues will be considered by each standing committee,<sup>43</sup> the House of Delegates

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<sup>40</sup> Nicholas R. Miller, "Logrolling, Vote Trading, and the Paradox of Voting: A Game Theoretical Overview," Public Choice 30 (1977): 52.

<sup>41</sup> Francis, "Leadership, Party Caucuses," 243.

<sup>42</sup> The Constitution of Virginia, Effective July 1, 1971, Article IV, Section 11.

<sup>43</sup> Commonwealth of Virginia General Assembly. Manual of the Senate and Manual of the House of Delegates 1988-89. Richmond, Va.: Commonwealth of Virginia, 1988. Rules of the Senate, Section VI.



provides no such detail in its rules, leaving the assignment of bills to committees to the direction of the Speaker of the House.<sup>44</sup>

In this manner, the committees serve as gatekeepers for their policy area giving them, in Shepsle and Weingast's <sup>45</sup> opinion, disproportionate control in their domain. As an example of this control, the General Assembly of Virginia has 15 senators and 20 delegates<sup>46</sup> on each standing committee. Given the need for committees to report a bill for it to be considered by the full House and Senate, this means that 19 people (the majority for a Senate committee being eight and the majority for a House committee being 11) determine the fate of a bill in their policy area. This situation is exacerbated by the trend which Hamm<sup>47</sup> found over the past 20 years in which membership on committees tends to be made up of persons specifically interested in that policy area. The tenure of these interested members is increasing over time. He attributes this, in part, to more occupationally heterogeneous legislatures which provide persons with more diverse backgrounds to serve on various committees. While this allows members to develop expertise in a policy area, it also allows those with that expertise and interest an even more

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<sup>44</sup> Ibid., Rules of the House, Rule 37.

<sup>45</sup> Kenneth A. Shepsle and Barry R. Weingast, "The Institutional Foundations of Committee Power," American Political Science Review 81 (1987): 87.

<sup>46</sup> While most House committees in the General Assembly have twenty members, there are several (Claims, Chesapeake Bay and Its Tributaries, Mining and Mineral Resources, and Militia and Police) which have fifteen, while Rules has only ten members.

<sup>47</sup> Hamm, "The Role of "Sub-Governments," 323.

powerful role in decision making on an issue. This ultimately leads to a stronger committee system, based on that expertise.<sup>48</sup>

This level of expertise and relative power may be influenced by the availability of administrative staff to provide information and research services to committee members. Hamm and Moncrief<sup>49</sup> found that more effective committees had a higher level of professional staffing which enabled the committee to handle bills efficiently and effectively. Committee effectiveness was described by Hammond<sup>50</sup> as the ability to: (1) Handle more bills; (2) Report fewer bills favorably; (3) Make more constructive changes to bills; (4) Have few changes made to committee bills on the floor; and (5) Study issues and develop legislation during interim of sessions. While strong staff support may be one source of a committee's power to influence legislative outcomes, committees without support staff can still wield considerable power.<sup>51</sup>

Although rules of the legislative chambers may control which bills are referred to a committee each committee has the power to affect a bill by its handling of the bill. If found not to be germane to the committee, a bill can be referred to another committee. Those bills

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<sup>48</sup> Robert J. Austin, "The Virginia General Assembly: Structure, Procedures, and Influencing Policy," In Virginia Government and Politics: Readings and Comments, ed. Thomas R. Morris and Larry Sabato, (n.p.: Virginia Chamber of Commerce and The Institute of Government, University of Virginia, 1984) 95.

<sup>49</sup> Hamm and Moncrief, "Effects of Structural Change," 384.

<sup>50</sup> Susan Webb Hammond, "Legislative Staffs," In Handbook of Legislative Research, ed. Gerhard Lowenberg, Samuel C. Patterson, and Malcolm E. Jewell, (Cambridge, Mass.: Harvard University Press, 1985) 302.

<sup>51</sup> Hamm, "The Role of Sub-Governments," 322.

which remain in the committee can be handled in ways which assist passage or ensure defeat on the floor. The various ways a bill is handled by committee include amendment, passing by, referring without change, or voting against recommendation of a bill. While amendments may change the intent of a bill, most bills are amended to some degree prior to final action. Amendments may help a bill gain passage if the committee proposes an alternative which is more acceptable to a majority of legislators.<sup>52</sup> A committee can kill a bill by failing to offer acceptable alternatives. The amount of screening and modifying of bills performed by committees, coupled with the floor acceptance level of these modifications are measures of a committee's power.<sup>53</sup> The committee can further control floor acceptance by choosing to provide or not provide information on an issue through study or by relying on information from interest groups and individual constituents with an interest in the issue.

Another source of committee power is the ability to control the sequence in which bills are considered.<sup>54</sup> This is particularly important in part-time legislatures, such as Virginia's, where failure to report a bill from committee in a one month period will cause the bill to die. This strategy is different from that used when a committee

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<sup>52</sup> Arthur T. Denzau and Robert Mackay. "Gatekeeping and Monopoly Power of Committees: An Analysis of Sincere and Sophisticated Behavior," American Journal of Political Science 27 (November 1983): 742.

<sup>53</sup> Hamm and Moncrief, "Effects of Structural Change," 387.

<sup>54</sup> Shepsle and Weingast. "The Institutional Foundations," 85.

truly needs more time to consider a bill and moves to carry it over into the next legislative session. A carry over keeps a bill alive.

In the Virginia General Assembly, since no bill can be considered on the floor until acted upon by a committee, failure of a committee to report a bill kills the bill unless its patron can encourage a committee to take it up again. While there are technically two other alternatives to reviving an issue killed in committee--amending a floor bill to address the issue or discharging the committee report--such actions rarely are successful because legislators respect the discretion and authority of committees.<sup>55</sup> Lack of committee action may be an indicator of the conflict or ambiguity surrounding the bill,<sup>56</sup> the committee chairman's disagreement with the bill, or it may be merely an indicator of no interest in the bill on either the part of the committee members or interest groups. With large workloads, committees are more likely to postpone consideration of bills in which there appears to be little interest.<sup>57</sup> Hamm and Moncrief found that this strategy was used most widely in committees with heavy workloads.<sup>58</sup>

In that committees are smaller groups with closer working relationships than those which exist on the floor of a legislative chamber, the issue of group dynamics is much more important in the committee

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<sup>55</sup> Jewell, The State Legislature, 100.

<sup>56</sup> Hamm, "The Role of "Sub-Governments," 328.

<sup>57</sup> Ibid., 343.

<sup>58</sup> Hamm and Moncrief, "Effects of Structural Change," 397.

setting. Because members of a committee request service on a committee, there is a bond of common interest between these members. Powerful committees and those of high interest for constituent service (e.g., finance, education) are more likely to be dominated by senior members of the legislature. Committees with limited influence are more likely to be made up of more junior members or those others who did not receive their preferred committee assignments. In addition to seniority preference, committees are constructed based upon representation across the state, party affiliation and, to some degree, race and sex of members. All of this affects the dynamics of the committee and subsequently affects the outputs of a committee. Gilligan and Krehbiel<sup>59</sup> found that committees with an output representing the moderate stand of the legislature were more effective in providing meaningful and acceptable choices for legislative action.

#### Clout of Key Legislators

Key legislators are those who, through either position or personal characteristics, can influence the passage of a bill. Those who affect the passage of a bill through personal characteristics do so by patronage, by speaking to the bill on the floor or in committee, or by private lobbying of other legislators.<sup>60</sup> A bill is more likely to be enacted if it is supported or patroned by a legislator with charisma, power,

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<sup>59</sup> Gilligan and Krehbiel, "Asymmetric Information," 461.

<sup>60</sup> Hamm, "The Role of "Sub-Governments," 327.

specialized knowledge or expertise, or other sources of influence.<sup>61</sup>

Conversely, if a legislator with these attributes opposes a bill, the bill is more likely to fail.

Legislators, on the whole, tend to be better educated and possess a higher socio-economic stature than the constituency they represent.<sup>62</sup> In the United States, the majority of legislators tend to be lawyers by profession,<sup>63</sup> giving them an expertise in matters of law. Even among lawyers, however, areas of expertise and experience are determinants of assignment to key committees and of formal and informal leadership positions.<sup>64</sup> The deference to expertise tends to reinforce the deference also given seniority because expertise and experience are often developed with tenure in the legislature. Other sources of such expertise or experience can be occupation (e.g., a legal specialty or other occupations such as educators who serve on education committees),

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<sup>61</sup> Michael E. Levine and Charles R. Plott, "Agenda Influence and Its Implications." Virginia Law Review, 63 (May 1977): 599.

<sup>62</sup> Donald R. Matthews, "Legislative Recruitment and Legislative Careers," In Handbook of Legislative Research, ed. Gerhard Lowenthal, Samuel C. Patterson, and Malcolm E. Jewell (Cambridge, Mass.: Harvard University Press, 1985), 18.

<sup>63</sup> Matthews found that the U.S. Congress has been 40%-65% lawyers since 1789. He attributes this to the tradition of the citizen legislator which required legislators to have a full time occupation outside their legislative duties. Lawyers had jobs with more flexibility, making them more "dispensable" during legislative sessions than members of other occupations. Matthews, "Legislative Recruitment," 20.

<sup>64</sup> Hamm, "The Role of "Sub-Governments," 325.

experience in various government service, or membership in organizations or associations.

In speaking of characteristics of individual legislators, personal attributes such as charisma, procedural deftness, interpersonal skills, and rhetorical skills<sup>65</sup> are also important in the conduct of committee and floor action, and in building consensus among legislative peers. Support or assault of a bill by a legislator with these attributes can help or hurt its chances of passage. In floor debate, competing views from legislators with equal rhetorical skills can prolong debate and possibly obscure the issue. While floor debate is that which is most often reported and gains media attention, the informal networks which meld support for or against an issue may be stronger determinants of the outcome of a policy.<sup>66</sup> The legislator who can tap into common interest areas of legislators and bring consensus prior to floor debate holds considerable power and is often the type of patron sought for a bill. In that this sort of informal action is not recorded, it is difficult to study (as compared to vote analysis or study of floor actions) but is an important focus for persons interested in the legislative process. An indicator of these actions is provided by looking at whether the ultimate passage of a bill was accomplished after language and provisions in the bill were amended to meet concerns of certain legislative actors. Such amendments indicate that successful compromise and negotiations

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<sup>65</sup> Levine and Plott, "Agenda Influence," 568.

<sup>66</sup> William P. Browne, "Policymaking in the American States," American Politics Quarterly 15 (January 1987): 48.

took place among key legislators who had an interest in the bill's passage.

The second type of key legislator is the one who affects legislative outcomes by virtue of his position. This is generally associated with positions which control the agenda of either a committee or floor action in a chamber. Levine and Plott<sup>67</sup> found that the control of the legislative agenda, whether intentional or coincidental, limited the choices of issues placed before a legislative body or committee for consideration. This limitation affects policy outcomes to a larger extent than the skills or charisma of individual legislators or the various parliamentary or voting strategies of individuals. For such control to be intentional, the person who sets the agenda must have considered various possible outcomes and how different agenda actions would affect those outcomes. The most basic sort of agenda power is that of deciding what will be considered by a decision making body. While this ability may be limited in chambers of a legislature, the agenda setter can affect outcomes by determining the timing of referral of bills to committees or discussion on the floor, deciding to which committee a bill will be referred, limiting debate on a bill, ruling on germaneness of amendments to a bill, and ruling on whether bills or parts thereof will be considered individually or en bloc. The ability to take intentional agenda actions may be limited by the rules of the legislative chamber.

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<sup>67</sup> Levine and Plott, " Agenda Influence," 563.



In the Virginia General Assembly, rules of procedure for floor action are fairly constrained. The Speaker of the House<sup>68</sup> has some discretion in referral of bills to committee but the President of the Senate<sup>69</sup> is very limited in his flexibility in assignment of bills. These agenda setters are also limited in their powers to control timing of bill referral. They exercise more control in matters of germaneness, floor debate, and how bills are taken up.

Ordeshook and Schwartz<sup>70</sup> found that this last ability can be important by allowing agenda setters to impact outcomes by the way bills are placed or paired. A controversial bill considered early in the day when members are fresh may sustain a different outcome than one considered late at night. Likewise, a seemingly innocuous bill which may have subtle implications may pass when considered after heated debate on a controversial bill. Another strategy is to pair similar but competing bills on the agenda in a manner which forces choices between the two before considering a third.<sup>71</sup> This increases the third choice's chance of approval from 30 percent to 50 percent.

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<sup>68</sup> Commonwealth of Virginia General Assembly. Manual of the Senate and House. Rules of the House, Rule 16.

<sup>69</sup> Ibid., Rules of the Senate, Section IV.

<sup>70</sup> Peter C. Ordeshook and Thomas Schwartz, "Agendas and the Control of Political Outcomes," American Political Science Review, 81 (March 1987): 181.

<sup>71</sup> Thomas H. Hammond, "Agenda Control, Organizational Structure, and Bureaucratic Politics," American Journal of Political Science 30 (May 1986): 382.

Ordeshook and Schwartz<sup>72</sup> also found that the power of the agenda setter is greatest when legislators are voting sincerely, rather than strategically. When legislators view the agenda as a form of control to be overcome, they can vote strategically or introduce items to complicate or override the agenda items. Such actions limit the agenda as a mechanism to control outcomes of policy votes. Again, the ability of legislators to try such actions is limited by the rules of the chamber. The U.S. Congress provides more flexibility in these matters than does the Virginia General Assembly where amendments are limited to those germane to the issue on the floor. Absent limitations of agenda altering strategies, McKelvey<sup>73</sup> found that limitations on time, knowledge and understanding of agenda left many decision makers unable to counter the power of the agenda setter.

#### Co-Patrons

A factor affecting legislative outcomes which is related to the clout of the patron of a bill is the number of legislators who agree to the bill and sign it as co-patrons. Browne<sup>74</sup> found that the number of patrons for a bill predicted its likelihood of passage; more patrons increased the chances of passage. This can be due to several factors which include the following:

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<sup>72</sup> Ordeshook and Schwartz, "Agendas and the Control," 184.

<sup>73</sup> Richard D. McKelvey, "A Theory of Optimal Agenda Design," Management Science 27 (March 1981): 304.

<sup>74</sup> Browne, "Multiple Sponsorship," 483.

1. Legislators unfamiliar with an issue seek cues<sup>75</sup> and a large number of co-patrons increases the likelihood of a given legislator finding among the co-patrons someone from whom he would take cues.

2. The number of co-patrons may simply indicate that it is a popular bill that would pass on its merits, regardless of co-patronage.

3. A large enough level of co-patronage may ensure floor passage simply because a floor majority may be represented among the co-patrons and opponents could not muster a large enough bloc to kill the bill.

4. Interest groups opposing a bill may work for compromise rather than defeat of a bill if a large co-patron list appears to make passage imminent.

This does not imply that co-patronage ensures passage of a bill or lack thereof dooms a bill. A bill may fail if it is significantly altered in committee so that the co-patrons can no longer support it or if all the co-patrons were in one house and the other house opposed the bill. Conversely, a bill may have enough merit to pass without co-patrons to provide signals to opponents or cues to the undecided. However, absent major amendments, a bill with many co-patrons should have a high likelihood of passage.

#### Legislative Schedules

Legislative schedules were one factor mentioned by Jerome<sup>76</sup> as cutting across other factors in the legislative process. This is the concept of "time." In the legislative environment, the "time" issue

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<sup>75</sup> Jerome, U.S. Senate Decision-Making, 122.

<sup>76</sup> Ibid., 134.

relates to a specific amount of time to review and act on bills. This is the factor which, in Jerome's words, causes legislative actors "to eject all the garbage"<sup>77</sup> and forward only those issues which have clear purpose and advocates. This function of time also forces decisions to be made on important but controversial issues as a session nears its end. In light of this screening and forced action function of legislative time, a short legislative session might be viewed as a positive feature. The critical importance of chronological time in the Virginia General Assembly can be grasped through a reading of the calendar of the 1991 Session (Appendix II) with the knowledge that almost 2,000 bills were considered in the time frame shown on the calendar.

Hamm and Moncrief<sup>78</sup> note that the number of bills being considered by the legislatures of the United States has increased significantly in the past decade. Francis<sup>79</sup> found that the average state legislature processed two thousand bills per session. In some states, this increase in workload has led to an increase in the length of sessions, more frequent sessions, or more use of special sessions.<sup>80</sup> In states with constitutional constraints on these options, other strategies have been used to handle the workload. These strategies include increased reliance on committees' recommendations due to limited time for floor consideration of issues, "passing by" (not considering) a larger number

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<sup>77</sup> Jerome, U.S. Senate Decision-Making, 135.

<sup>78</sup> Hamm and Moncrief, "Effects of Structural Change," 383.

<sup>79</sup> Francis, "Leadership, Party Caucuses," 244.

<sup>80</sup> Treadway, Public Policymaking, 100.

of bills, carrying over more bills to another session, use of rules to limit consideration of bills, and screening out of more bills at the committee level.

#### Bills Which Set Precedent

The process of governance tends to be incremental and conservative in nature. While new initiatives are launched from time to time, these usually are accompanied by considerable research and take several years to gain passage. A recent example of this in Virginia was the effort to gain authority for a lottery in the state. Such initiatives fare better when spear-headed by the chief executive and have wide based public support, such as the transportation initiative of Governor Baliles. The legislative reticence to set precedent is even more acute in Dillon's Rule states when localities ask for increased local authority on an individual basis but which may set a precedent for provision of such authority to all similar localities.

As a consequence of this phenomena, legislation which proposes dramatic changes in a policy area is much less likely to gain passage. One strategy for dealing with this is to incrementally change a policy to move toward an eventual goal. This is often the manner in which new environmental regulations are enacted, particularly if there are measurable standards which can be achieved over a period of time (e.g., recycling goals).

## The Nature of the Legislation

### Regulatory Legislation

Public policy has been categorized in a number of issue areas. One typology is that put forth by Lowi in which policy issues are described as distributive, regulatory, or redistributive.<sup>81</sup> Distributive issues are those in which resources are dispensed to specific constituencies. They are viewed as public policy issues in which there are no losers and are often based on allocation formulas which provide a benefit to a wide spectrum of citizens. Such a policy in the environmental issue area might be the provision of grant assistance for improvement or protection of the environment. Regulative policy places limitation on a constituency such as business and thereby may create conflicts in which some groups view the outcome as having losers and winners. Distributive and regulatory policy do not focus on decisions concerning allocation of scarce resources. This is not the case in redistributive policy in which resources are transferred from one constituency to another causing conflict as to which groups are to be the winners and losers. Wong<sup>82</sup> found that, in Congress, distributive policies had wide acceptance while regulative and redistributive policies often lead to varying degrees of partisan conflict.

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<sup>81</sup> Theodore J. Lowi, "American Business, Public Policy, Case Studies, and Political Theory," World Politics, 16 (1964): 679; cited in Michael T. Hayes, Lobbyists and Legislators (New Brunswick, N.J.: Rutgers University Press, 1981), 19.

<sup>82</sup> Kenneth K. Wong, "Policymaking in the American States: Typology, Process, and Institutions." Policy Studies Review, 8 (Spring 1989): 532.

Environmental policy tends to fall into the regulatory area in that, generally, controls are placed on some group to provide protection of the environment. Ripley and Franklin<sup>83</sup> further categorized regulatory policies as either competitive or protective. Competitive regulatory policies are those which limit the provision of goods or services to one or a few providers to ensure public interests are met in the delivery of the service. An example of such a policy at the state level is the selection of the companies which may provide electric power in the state. Protective regulatory policies are those which protect the public by controlling certain activities which could be harmful or detrimental to the public (e.g., regulation of food establishments, industrial pollutant controls). This latter group is more likely to have controversy associated with it because all members of the regulated group may view themselves as losers. This differs from competitive regulatory policy where some member of the regulated group is viewed as the winner. The cases in this study which are regulatory in nature fall into the protective regulatory category in that they generally provide a protection to the public by controlling certain activities. If the state were to allow only certain companies to recycle solid waste or handle water quality samples, competitive regulation policies would be implemented to fulfill these objectives. Most environmental policy in Virginia does not fall into this area.

The tendency of environmental issues to be regulative leads to some conflict surrounding environmental issues but not to the extent

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<sup>83</sup> Randall B. Ripley and Grace A. Franklin, Policy Implementation and Bureaucracy, 2nd ed., (Chicago: The Dorsey Press, 1986): 76.

which might be seen in social assistance policies and other redistributive policies. Such conflict can be expected to divide along Republican-Democratic lines if the issue deals with regulation of business (assuming that the tradition of Republican ties to business interests hold).<sup>84</sup> An example of environmental legislation which might be viewed as regulating business would be slow growth legislation limiting the construction industry. Given the likelihood that there would be losers in regulatory policy, elected officials tend to move with caution in support of these issues unless there is overwhelming public support for the bill or unless there is clear information to show the danger or hazard associated with lack of regulation.

One type of regulatory policy which is an exception to this caution is that area termed "self-regulation" in which a constituency group requests legislation to control its activities. These are considered non-controversial because the group which traditionally would be regarded as the losers is the group requesting the legislation thus removing constituent lobbying against the issue.<sup>85</sup> Environmental issues fall into this category when citizens request general controls on environmental issues or when an industry requests regulation to force a few members to meet publicly accepted standards.

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<sup>84</sup> Jewell, The State Legislature, 59.

<sup>85</sup> Stuart H. Rakoff and Ronald Sarner, "Bill History Analysis: A Probability Model of the State Legislative Process," Polity 7 (Spring 1975): 411.



## Legislation to Provide Service

Related to the concept of redistribution and distribution in public policy is that of provision of service. Many of these services are routine services provided to all citizens (e.g., transportation system, public health surveillance activities, public education) and are considered basic responsibilities of government.<sup>86</sup> Legislation to provide these services is rarely challenged and is non-controversial unless resource scarcity requires that the services be rationed in some manner. A second type of service is directed at a particular group of citizens, such as the elderly or the poor, rather than to all citizens generally. This type of service may be more controversial depending on whether it is viewed as distributive or redistributive. However, taken on the whole, legislation to provide services usually passes because it brings constituency support for legislators who helped enact the legislation to benefit the constituency. A strategy often used by legislators to allow everyone to win with such legislation is to ensure that every constituency benefits in some way. Environmental legislation does not often fall under the category of service provision unless there are grant funds to be awarded to specific groups or localities. In such cases, the legislation has more likelihood of passage, particularly if there are mandates to be met and the funds help meet those mandates.

As the research detailed above shows, no one factor overwhelmingly determines policy outcomes, and a strong factor in a given year or on a specific issue may be unimportant in another year or regarding another issue. The ability to discern which factors are important at a given

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<sup>86</sup> Wong, "Policy-Making in the American States," 529.

time or on a given issue should be a skill which every policy actor in the legislative arena seeks to hone. A summary of these factors is presented in Table 3, with a brief description of the impact of each on legislative outcomes.

TABLE 1  
SUMMARY OF CASE FACTORS AFFECTING LEGISLATIVE OUTCOMES

FACTOR	NATURE OF IMPACT
<u>Environmental Factors</u>	
Perceived saliency to public	An issue perceived as salient is more likely to be introduced and enacted
Election schedule	Controversial issues are likely to be postponed if a legislative election is near
Availability of studies/ information	Studies and other information on alternatives and impacts may improve support for a complex issue
<u>Political Factors</u>	
Governor support	Support of the governor improves likelihood of passage
Interest Group support or opposition	Strong interest group support improves likelihood of passage; conversely, opposition increases likelihood of failure
Party support	Party support can increase support thus assisting passage
Voting strategies	Strategies can help or hinder passage
<u>Institutional Factors</u>	
Committee support	Committee support in both chambers is critical to bill's success
Patron clout	Bill patroned by a legislator with clout is more likely to pass
Co-patron status	More co-patrons for a bill increase it's likelihood of passage
Legislative schedule	Legislation considered near end of session is more likely to be deferred or killed
Precedent setting	Bills which set a precedent are less likely to pass
<u>Nature of the Bill</u>	
Protective Regulatory	Protective regulatory bills are less likely to pass than those which do not impose limits on constituency groups
Competitive Regulatory	Competitive regulatory bills have both winners and losers among businesses to be regulated and so have limited controversy and are more likely to pass than protective regulatory
Service oriented	Bills providing a service are more likely to pass unless the policy is redistributive

## CHAPTER 3

### METHODOLOGY

This research seeks to answer the following questions:

1. How does the Virginia General Assembly process bills which are proposed by local governments in Virginia?

2. Are there identifiable factors in this legislative process which the local governments could influence to improve the outcomes of their legislative initiatives?

The research design used to answer these questions is a qualitative case study methodology which allows for interpretation of and development of an understanding of the legislative process in the General Assembly. Patton<sup>87</sup> identifies five purposes of qualitative research. These are: basic research, applied research, summative evaluation, formative evaluation, and action research. This study deals with the purposes of the first two types. It is basic research in its focus on investigating the workings of the Virginia General Assembly as it relates to existing theory on the legislative process in other states and in the federal government. In this regard, this study will contribute to the body of knowledge on legislative process by confirming existing theory, and by providing insight into how the Virginia example

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<sup>87</sup> Michael Quinn Patton, Qualitative Evaluation and Research Methods, 2nd ed. (Newbury Park: Sage Publications, 1990), 150.

is similar to and different from the legislative process of other states.

This research also addresses an actual problem which urban governments in Virginia and other states are faced with: that of gaining necessary state legislative support for critical enabling powers, for state-wide legislation of particular importance to urban areas, and financial support for urban programs and populations. This applied research focus of the study seeks to describe the current legislative process and, in so doing, provide a clearer picture to urban legislative actors of how they could better influence the legislative process for the advantage of their constituencies.

The experience and legislative successes of cities and counties in the northern part of the state can provide a measure of guidance. However, Hampton Roads differs from Northern Virginia in its blend of industry and business, its type of government,<sup>88</sup> and the sensitive natural environment in which Hampton Roads exists. The cities in Hampton Roads can better mold their legislative strategies for the future using lessons gleaned from successes and failures of legislative initiatives from the Hampton Roads area itself. This study provides insight into those successes and failures.

In the journals of the House and Senate, the Virginia General Assembly maintains records of floor action, including amendments and

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<sup>88</sup> Two large legislative players in the northern portion of Virginia are Fairfax and Loudoun Counties. Fairfax County has an urban county form of government--the only one in Virginia--and Loudoun has a county form of government. These forms of government have different relationships to the state than do the independent cities of Hampton Roads. In addition, the two northern localities have received numerous grants of power by seeking special legislation for urban county government and contiguous localities.

votes on all bills which reach the floor of both houses, and a report of committee action on House bills that do not reach the floor. No formal record of committee action is kept except for committee votes, as reported in the daily calendars of the House and Senate. The Clerk of the House indicated that a study was done of the potential of expanding records to include discussion, testimony, defeated amendments, and persons speaking to the issue. While some videotaping of Senate committees now occurs, it was felt that videotaping in the House would cut the give and take of the committees. In the words of one person interviewed for this study "the committee system is important and we don't want to disturb it." Because this provides minimal archival data of a predominantly nominal type, the records of the General Assembly are limited to study of patterns of votes either within issues or across time. The available archival data is not sufficient to predict the potential for an issue to succeed or fail based on identified factors affecting the legislative process which can be defined and applied across legislative sessions.

While archival data provides information as to the outcomes of a legislative item, it is of limited use in providing insight into why a legislative initiative might not have been fulfilled (e.g., the item was not introduced, funding was not available). To answer the question regarding why a particular outcome occurred, this study relied upon newspaper accounts of the legislative process and interviews with key legislative actors and observers.

### Research Design

This research uses multiple-case studies with embedded units of analysis. This design was selected based on Yin's<sup>89</sup> criteria for different research strategies. The relevant situations leading to the selection of a case study research design are three, as described below.

1. The research answers "how" or "why" questions. Specifically, the question is an exploratory one which seeks to answer why policy issues are acted upon favorably or unfavorably in the Virginia General Assembly. An extension of this question is that of how, based on a discreet set of factors, the outcome of a given legislative issue might be predicted, or how an interested party might influence the outcome.

2. The researcher cannot control the behavioral events being studied. Given that the issue studied dealt with the actions of the state legislature over a three year period in recent history, the researcher can not control behavior of the actors as it affected the outcome of the legislative issues. The legislative sessions under study had adjourned and the results were "closed" for the period under study. It should be noted that in conducting this type of research, it is possible that asking the questions contained in the interviews could impact a legislator's view or action concerning an issue, whether consciously or subconsciously. It is therefore critical that a researcher ensure that legislative issues being researched are finalized to limit the affect the research might have on the legislative process. In this research, the sessions under study were one to four years past

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<sup>89</sup> Robert K. Yin, Case Study Research: Design and Methods, revised ed. (Newbury Park, Calif.: Sage Publications, 1989), 17.

when the first interviews were conducted, thus controlling this potential problem.

3. The study focuses on contemporary events. In that the study reviews actions of three recent legislative sessions, with an interest in providing urban policy makers with information on what affects passage of a bill in the General Assembly, the focus is certainly contemporary. The focus on environmental issues furthers the contemporary focus of the research, given the expanding interest in environmental preservation and control at the local, state, and national level.

A multiple case design was chosen because no single legislative item was deemed so unique or critical that its study alone would reveal credible answers to the research questions. The use of multiple cases provides for replication of the research findings, thus strengthening the reliability of the findings. Failed cases which display common elements which allow prediction of failure while those which succeeded have a set of common elements different from those of the failed issues.

In selecting a set of legislative issues for study, focus on one type of issue (e.g., education, public safety, health and welfare) is important for control of the variability in legislative outcomes which might be attributable to specific issues. Sharkansky and Hofferbert<sup>90</sup> and Francis<sup>91</sup> found that legislative environmental factors and political

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<sup>90</sup> Ira Sharkansky and Richard I. Hofferbert, "Dimensions of State Politics, Economics, and Public Policy," American Political Science Review 63 (September 1969): 867-79; cited in Treadway, Public Policymaking, 146.

<sup>91</sup> Wayne L. Francis, "A Profile of Legislator Perceptions of Interest Group Behavior Relating to Legislative Issues in the States," Western Political Quarterly 24 (December 1971): 711; cited in Treadway, Public Policymaking, 109.



factors vary in their impact on legislative outcomes with the type of legislative issue. A study of multiple issues before the Virginia General Assembly could determine the strength of correlations between issue types and factors, but would not provide the desired focus for this study on the process in which these factors come to play. To allow generalization to other types of legislative issues, each case in this study is characterized as service oriented or regulatory<sup>92</sup> in nature. Wong<sup>93</sup> found this typology useful in structuring a study of state policy making across various issues. He was able to discern patterns in the policy process which could be used to explain similar outcomes of issues within the service policy category but which differed from regulatory outcomes. Similar similarities and differences can be identified in the findings of this research.

In this research, ten cases, constituting environmental policy issues proposed in 1987, 1988, or 1989, were selected for study. For purposes of this study, environmental issues are defined as those issues which deal with preservation, restoration, or prevention of degradation of the natural environment in Virginia and its contiguous waters. Not included in this definition are those issues which are driven primarily by concerns for recreation, tourism, payment for infrastructure improvements, and similar issues. The ten cases are:

1. Erosion and sediment control penalties
2. Ban of Phosphate Detergents

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<sup>92</sup> This dichotomy is developed by Jeannie N. Clarke and Daniel McCool, Staking Out the Terrain, (Albany: State University of New York Press, 1985): 6.

<sup>93</sup> Wong, "Policy-Making in the American States," 543.

3. Ban on Mining and Milling of Uranium
4. Tree Protection/ Preservation
5. Back Bay/North Landing preservation
6. Stop Work Orders for wetlands protection
7. Transferable Development Rights
8. Amendments to the Chesapeake Bay Preservation Act
9. Non-tidal wetlands protection
10. Recycling objectives

These ten issues were chosen, not because ten constitutes a representative sample of some subset, but rather because these ten center around environmental concerns articulated by the six localities under study. They include both cases which succeeded and failed in the legislative process and had a variety of factors which affected their outcomes. The legislative area of environmental policy was chosen for in-depth study for the reasons<sup>94</sup> outlined below.

1. For the years under study, the six localities each supported some of the environmental initiatives identified.

2. There are variations in the support these issues were given by the cities, depending on the level of development of the cities (e.g., older cities may desire more flexibility in redevelopment and thus might not support growth control legislation favored by newly urbanizing cities). However, with environmental issues, the coalition for support could vary with the issue and would not uniformly be determined by

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<sup>94</sup> These criteria are consistent with those used by Browne in his case studying of issues on aging. William P. Browne, "The Aged Agenda in State Legislatures: A Comparative Perspective," Policy Studies Journal 17 (Spring 1989): 495-513.

rural/urban socio-economic variances. As an example: while both urban and rural areas supported legislation enabling preservation of valuable or historic specimens of trees, the rural areas tended not to support preservation of tree canopy levels because it was not a problem for them. By contrast, Chesapeake Bay preservation issues crossed rural-urban boundaries and created coalitions based on economic impact of the proposed regulations.

3. Environmental quality is a critical issue to the Hampton Roads area because of the problems which growth is spawning and because of environmental initiatives which heavily affect marine/ estuarine environments such as those found in Hampton Roads. Of particular note is the far-reaching state Chesapeake Bay Initiative.

4. Bills relating to environmental policy areas are of such diversity that they may be referred to several different committees in both houses of the General Assembly. This diversity allowed comparisons to be made between the outcomes of bills, relative to committee assignment. As an example, in the House, a bill to control erosion of agricultural land into Chesapeake Bay tributaries could be referred to: the Committee on Conservation and Natural Resources, Agriculture, or to the Committee on the Chesapeake and Its Tributaries. By contrast, a bill dealing with indigent health care would be referred only to Health, Welfare and Institutions.

5. Environmental preservation is becoming a high priority on national policy agendas. New and proposed federal standards for environmental quality, coupled with many local and state action groups,

render state legislative response to environmental concerns of great interest to state and local government policy actors.

6. Environmental issues are of such general interest that a cross section of interest groups speak for and against proposed environmental bills. These groups could be citizen interest groups, employee interest groups (e.g., watermen concerned about Bay regulations), or professional lobbies (e.g., builders concerned about land use restrictions).

The records of the General Assembly for the three years under study were reviewed to determine which items were acted upon favorably and which were not. For purposes of this study, favorable action is defined as passage of desired legislation, appropriation of desired funds, or similar positive action in a given year. All other actions (e.g., tabled, passed-by) are considered unfavorable. Further review of General Assembly documents, media reports, and other data on legislator effectiveness, and interviews with key legislators and staff was undertaken to gather other data on the legislative outcomes of the cases under study.

Each case is comprised of a summary of the issue requested by the local government, a legislative history of the action related to the request, and conclusions drawn specific to the case. Legislative action reviewed is for either the 1987, 1988, or 1989 legislative sessions. In cases where a germane bill was introduced in 1986 and carried over for consideration in 1987, or a 1989 bill was carried over to 1990, the records of the 1986 and 1990 sessions were reviewed for data specific to those cases. This review was limited to bills which had some action in one of the three years under study. Expansion beyond this frame could

have caused shifts in factors affecting legislative outcome, such as clout and legislative leadership, due to intervening elections for the House of Delegates which introduced a new set of policy actors. The data drawn from documentary sources and from interviews are compiled to create a case study of each of the legislative environmental issues proposed. The case studies are analyzed both as separate cases and as a group to formulate conclusions as to what determines whether a specific item is favorably acted upon by the General Assembly.

The legislative proposals studied were those of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth, and Virginia Beach. These cities share similar problems of growth, although Virginia Beach and Chesapeake are slightly different from the others in that urbanization is fairly new to these cities and both still have a sizeable agricultural interest. However, all these cities are facing problems common to urban and suburban localities and have legislative delegations which represent a wide range of styles, experience, and party affiliation. As such, the findings of this study allow some conclusions to be drawn regarding legislative actions for similar areas.

While the various environmental issues provide the framework for the ten case studies, the unit of analysis was the various factors which were present in the legislative process surrounding that issue. This serves to inform the research question regarding factors affecting legislative outcomes<sup>95</sup>.

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<sup>95</sup> Use of the environmental issue as the unit of analysis might serve to answer a different research question regarding attitudes and actions regarding specific environmental issues in Virginia and similar states.

To ensure that the cases to be studied were significantly varied and had archival data adequate to support the proposed research, some preliminary data review was done for each of the ten issues comprising the cases. It was during this period of the study that it was found that the Virginia General Assembly does not maintain records of the proceedings of committee meetings except for the formal vote on a bill or amendments to a bill. This finding significantly altered the design of the research and indicated a need for a more qualitative approach to the research question. In addition to this preliminary data review, one issue--tree preservation--was carried through all archival data collection steps to ensure that identified sources of data were available. While no major gaps were uncovered in the archival data, changes were made to the data collection forms to promote more efficient recording of the data based on a better understanding of how legislation flows through the General Assembly.

The questionnaires used for data gathering were reviewed by an intergovernmental liaison for one of the local cities to ensure that questions were clear and were of such a nature that they could reasonably be responded to by the legislative actors to whom they would be addressed. Based on this review, some wording was revised and one issue was framed in a different manner because it was a subject of interest to only one city in the study. Upon final revision of the questionnaire, a senior legislator was contacted for an interview prior to contacting any other legislators. This interview was conducted and results reviewed prior to proceeding with other interviews. In answering the open ended question "What other factors do you feel play a key role in the passage

or failure of a bill?", this respondent indicated there were no others--the questionnaire list included all the key factors. This response improved the confidence which could be placed in the comprehensiveness of the questionnaire prior to its use for further data collection.

### Selection

To address collection of the two types of data--actual case data and interview data--two methodologies were established for selection of subjects. Each is described below.

#### Case Selection

As was indicated above, six cities in the Hampton Roads region (Fig. 1) are studied. This provides for a sample of both core cities (Hampton, Norfolk, and Portsmouth) and newly urbanized cities (Chesapeake, Newport News, and Virginia Beach). In addition, they represent a diversity in political backgrounds affecting both the selection of issues in the legislative proposals and the activities in support of the proposals.

As a preliminary step in selection of subjects for study, legislative proposals were requested from all six cities for the years 1984, 1985, 1986, 1987, 1988, and 1989. This range was chosen to ensure a sample covering both a state legislative election year and a change in governors. This allowed assessment as to whether shifts brought about by new executive and legislative branch actors would affect the outcome of legislative issues proposed by the localities. Upon receiving proposals from local governments, it was necessary to narrow the study

to the years 1987, 1988, and 1989 because three of the six cities had no formal legislative proposal process prior to 1987. This was not considered a major threat to validity of the study for the following reasons:

- These three years included a General Assembly election in which some changes in legislative actors occurred,
- These years included two different state biennium budgets, one of which was proposed by the previous governor, thus providing some "cross over" in executive agenda, and
- The local cities tend to include the same items in the legislative proposal for several years. Thus, including more years would add few new issues to the study.

All issues included in the legislative proposals for the three years were classified into eleven general areas of interest as follows: (1) Education and libraries; (2) Recreation and culture; (3) Revenue production; (4) Safety and criminal justice; (5) Tourism and economic development; (6) Human services; (7) Local government power; (8) Miscellaneous; (9) Payment for development; (10) Transportation; and (11) Environmental (Appendix III). Of these, environmental issues were selected for study based on Browne's<sup>96</sup> criteria for selection of a legislative issue for study. The criteria he used to select a subject for legislative study were that the issue was:

- A universal problem among the states,
- An issue with various groups supporting it,
- An issue which was institutionalized in the state,
- An issue which encompassed a fairly large number of bills to be acted upon by the legislature.

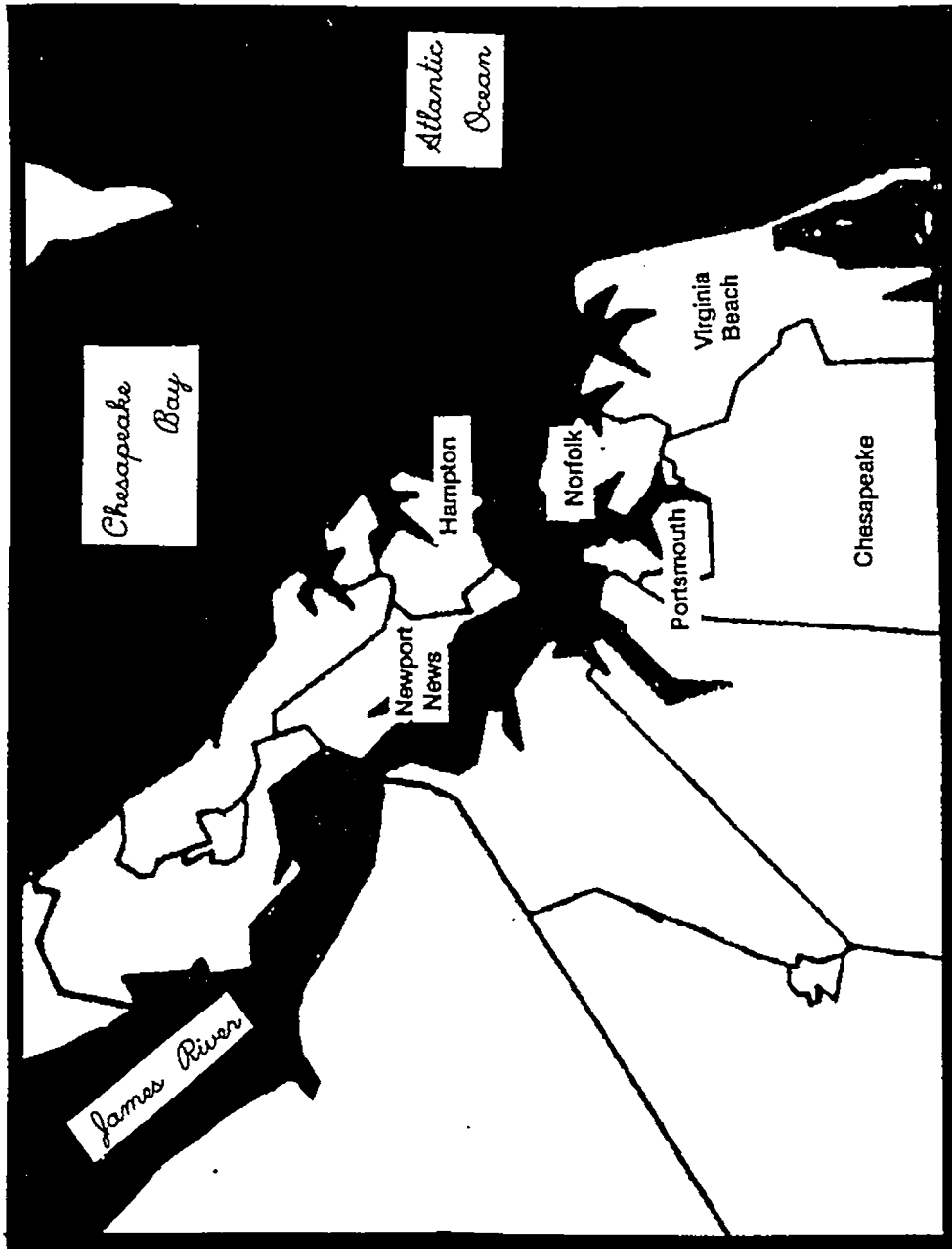
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<sup>96</sup> Browne, "Policymaking," 51.



FIGURE 1

THE HAMPTON ROADS, VIRGINIA REGION



- An issue which was dealt with by a number of legislative committees, each with members interested in the issue area.

The environmental policy area in Virginia meets all these criteria and also is of interest because it is an issue with impacts for the entire state, an issue with over-arching federal regulations, and an issue which has stake-holders in several state agencies. Each of these characteristics broadens the ability of this research to be applied to other legislative issues in Virginia or in other states.

For the three years under study, the six cities had 21 items in their legislative proposals dealing with environmental issues. In that several localities proposed items dealing with the same environmental issue, and some items were included in legislative proposals for more than one year, the total number of different issues is ten. These were organized into ten cases based on the subject matter. The proposals are shown in Table 2, grouped by the ten case study issue areas under which they fall. The case studies comprised over forty bills because one issue often generated several alternate bills, each of which was researched to determine outcome and determinants of outcome. (Using the tree protection example, in one session of the General Assembly, six bills were introduced or carried over pertaining to this issue.)

These issues represent a wide spectrum of factors impacting legislative outcomes and reflect issues which were acted upon both favorably and unfavorably by the General Assembly. As such, these ten cases meet Yin's criteria for multiple case studies which require that selected cases either replicate the results predicted by the theoretical framework or that selected cases fail to replicate results of the

TABLE 2  
CASE STUDY ISSUES AND PROPOSAL ITEMS

Issue	Year Proposed	City Proposing	Title of Issue Proposed
1	1987	Newport News	Erosion and sediment control penalties
2	1987	Virginia Beach	Ban of Phosphate Detergents
3	1987	Virginia Beach	Mining and Milling of Uranium
	1988	Virginia Beach	Mining and milling of uranium
4	1987	Virginia Beach	Tree Protection
	1988	Chesapeake	Tree preservation
	1988	Virginia Beach	Tree protection
	1989	Chesapeake	Tree preservation
	1989	Newport News	Tree preservation
	1989	Portsmouth	Tree conservation
	1989	Virginia Beach	Tree Protection
5	1988	Virginia Beach	Back Bay/North Landing preservation
	1989	Virginia Beach	Back Bay/North Landing preservation
6	1988	Virginia Beach	Stop Work Orders for wetlands protection
7	1989	Virginia Beach	Transferable Development Rights
8	1989	Hampton	Amendment of Chesapeake Bay Preservation Act
9	1989	Hampton	Non-tidal wetlands
	1989	Virginia Beach	Non-tidal Wetlands
10	1989	Newport News	Recycling objectives state wide

theoretical framework because of differences in the defined factors which would have predicted different outcomes<sup>97</sup>.

#### Selection of Legislative Actors and Observers

For the years under study, there were eight senators and 19 delegates representing the six cities included in this research. Given the small size of the total number of available persons for interviews and the strong potential for non-response, the goal in soliciting interviews was to interview one third of the delegates and one third of the senators. This provides some representation of the various perspectives of different cities and of membership on different committees.

Specific persons to be interviewed were identified during the review of archival records by noting what legislators and staff were key actors in the environmental issue area or in the general legislative process. Key selection criteria were city of residence and membership on committees to which environmental legislation would be referred. These key committees are listed in Table 3 with information on total committee size, the number of legislators from the six Hampton Roads cities on the committee, and the number of Hampton Roads legislators/assistants interviewed for this study.

Based on committee membership, two to three persons were selected from each city and sent letters outlining the research. A follow-up was made to set up an appointment for an interview. Further consideration was given to including women, minorities, and non-lawyers in the sample to ensure that any variations in perception of the

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<sup>97</sup> Yin, Case Study Research, 111.

TABLE 3  
REPRESENTATION ON KEY ENVIRONMENTAL COMMITTEES

Committee	Total Committee Membership	Hampton Roads Representation	Number Interviewed
<u>Senate</u>			
Agriculture, Conserva- tion, & Natural Resources	15	0	0
Finance	15	1	1
Local Government	15	3	3
<u>House</u>			
Agriculture	20	1	1
Appropriations	20	4	2
Counties, Cities, and Towns	20	2	2
Chesapeake Bay and Its Tributaries	15	6	3
Conservation and Natural Resources	20	4	2

importance of the defined factors which might be attributable to these differences was given some attention.

Three senators, one legislative assistant to a senator, eight delegates, and one legislative assistant to a delegate were interviewed. In the case of the two assistants, they responded to questions in the absence of the legislator for whom they worked and indicated if their personal perception might vary from that of the legislator. Both have extensive experience in the General Assembly with a variety of legislators, routinely monitor committee meetings of the General Assembly, and were highly recommended for interviews by several local government legislative liaisons. The persons interviewed and the various selection criteria are detailed in Appendix IV.

It is of note that this group represented at least one person from every committee in the House of Delegates and all Senate committees except Agriculture Committee (which has no senators from Hampton Roads) and Transportation (with only one senator from Hampton Roads.) While no special attempt was made in selection of legislators to represent committees other than those which handle environmental issues, the wider representation improves the confidence with which the results of this study can be viewed regarding the legislative process as it relates to issue areas outside the environmental area.

Regarding other variables considered in selection of persons for interview, the persons interviewed included four women and nine men; four Afro-Americans and nine caucasians; eight lawyers, two educators, two legislative assistants, and one clergy member. This is representative of the total General Assembly membership from the six Hampton Roads

cities under study. Of the five Republicans in the membership from Hampton Roads, only one was interviewed. Two others were asked and declined or did not respond so legislators with similar committee assignments and residency, even though not members of the Republican Party, were interviewed. Given the overwhelming majority of Democrats from the Hampton Roads area, the few Republicans tend to work with the Democrats on most local legislative issues thus the limited response is not considered a threat to this study.

In addition to interviews of elected officials, various other persons who either participate in or observe the legislative process in the General Assembly were contacted for interviews. These were identified through the recommendation of persons contacted in various governmental and non-governmental offices, and through notation of their positions during review of archival data. These persons include legislative staff and legislative observers. The number of persons interviewed in this portion of the study totalled eight and included the following: one news reporter, the Clerk of the House, the Clerk of the Senate, two staff members of the Division of Legislative Services, one university political science professor with an extensive research background on the General Assembly, and one executive branch employee with a strong background in legislative process issues in Virginia (Appendix IV).

Concerted efforts were made to include a second media representative, following three leads. However, two persons declined to be interviewed, citing lack of knowledge of either the legislative process or environmental issues, and the third person did not respond to calls

and a letter of request. This was one of the last interviews to be scheduled. In that the interviews completed to that point in the research provided a wide spectrum of perceptions on the General Assembly, this non-response was not considered so critical as to attempt to identify another person with adequate knowledge of the legislative process to respond substantively to the interview questions. In addition, considerable data were available through newspaper accounts and reflected, in part, the views of media representatives considered for interview. These interviews provide a balance to the perception of the legislators, who are more directly involved in the legislative process, and confirms many of the observations of the elected officials and offer some new insights from a different perspective.

Local government officials were not included in the interview sample because the focus of this research is the legislative process in the General Assembly with one goal being to provide insights which might improve legislative outcomes of initiatives proposed by local governments. As such, local government policy actors were more likely to provide a description of the problem under study, rather than insight into possible solutions. Extensive use was made of informal contacts and brief calls of inquiry or clarification with local government liaisons, particularly those for the cities of Virginia Beach and Norfolk who have extensive knowledge and experience relative to the General Assembly.



### Instrumentation

Data were collected using various methods for the primary and secondary data. Each of these is described below.

#### Secondary Data Sources

The following sources were used to gather secondary information relative to legislative histories, legislative outcomes, and basic information on possible explanations for outcomes.

1. Review of archival records of the General Assembly for the three subject years were used to obtain data on: (1) The outcome of bills; (2) Committee referrals; (3) Committee action on bills; (4) Status of the bill relative to the governor's budget and initiatives; and (5) Patron and co-patron identification.

2. Newspaper and similar reports on legislative action, issues, and actors were reviewed. These records provided data on: (1) Clout of individual legislators; (2) Interest groups which supported or opposed bills; and (3) Other issues which may have been critical to the outcome of bills (e.g., negotiated trade-offs or compromises, external impacts).

A single data collection instrument was used to collect all archival data, by issue (Appendix VI). Its use is outlined under "Data Collection and Recording" below.

#### Interviews

Interviews with key actors in the legislative process included the following groups:

1. Key legislative members in both houses were interviewed from both core cities and newly urbanizing cities to control for differences in legislative emphases of these areas. Membership on key committees and tenure in the General Assembly was considered in selecting persons for interviews.

2. Informal contacts with local government legislative liaisons were made. Formal interviews with legislative liaisons were not undertaken because there was interaction with these individuals in the early phases of data collection. In addition, the process under study encompassed their primary job function leading to a high probability that their view of the process would be problem oriented and would be impacted by their most recent legislative successes or failures.

3. Support staff of the General Assembly provided information on how the process and calendar might effect a bill's passage as well as insight into why particular bills pass or fail.

4. Observers and other persons with specialized knowledge provided insights into the legislative process of the General Assembly.

Interview questions focus on potential legislative outcomes as drawn from the literature, and on the specific environmental issues under study. These are interspersed with open-ended questions which elicited individual perceptions on the legislative process and raised other relevant issues. Legislators or staff members were not expected to be familiar with details of each specific case but, rather were expected to provide insight about the legislative process in general. This issue was explained at the start of each interview so that persons interviewed did not feel forced to answer questions about which they had

no knowledge and to assure them that what answers they did provide were important to the research<sup>98</sup>.

A pool of questions was developed from which three questionnaires were derived. Variation in the specific questions included on the three forms was based on whether a person's committee assignments or position would enable them to answer specific questions regarding environmental issues, or more general questions (Appendix V). Care was taken in the ordering of the questions to ensure that the issues raised in some questions did not impact responses to more general questions.<sup>99</sup> The interview instruments were submitted as part of the proposal to the Dissertation Committee for review for content and for adherence to the guidelines established by the University's Institutional Review Board for the Protection of Human Subjects (IRB).

Interviews provided the following types of information:

- Insight into what processes or actors affect the outcome of a bill and what actors wield legislative power,
- How the legislative process and calendar might effect a bill's passage and why a particular bill passed or failed,
- Confirmation of trends noted in the case data,
- Interest group or agency support or opposition to a particular bill,
- Insights into other possible factors affecting the outcome of legislation, in general, or of a particular bill included in the study,

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<sup>98</sup> This is consistent with Converse and Presser's recommendation regarding the potential for "don't know" responses. Jean M. Converse and Stanley Presser, Survey Questions: Handcrafting the Standardized Questionnaire, Quantitative Applications in the Social Sciences Series, (Beverly Hills, Calif.: Sage Publications, 1986), 36.

<sup>99</sup> This concern is addressed in Converse and Presser, Survey Questions, 39.

- An explanation of variations which may occur between the data and predicted results (based on the literature on legislative process and power),
- Possible explanations of variations between the outcome of a particular bill and the general trend in the outcome of the bills studied (e.g., of the six tree protection bills, why did one pass and five fail? what made the difference?), and
- An assessment of how representative the cases under study are of the larger legislative process arena.

#### Data Collection and Recording

Data collection and recording took place over an 18 month period. The longest phase was completion of interviews because legislators are not generally available from October to May due to election cycles and the actual General Assembly session. The steps taken for each type of data collection are described below.

#### Secondary Data Collection Steps

The secondary data--that derived from records of the General Assembly and other archival sources--provided the basis for construction of a bill history, including critical points as identified by Rakoff and Sarner<sup>100</sup>. These data were collected using the "Legislative Item Data Collection Form," (Appendix VI). Following is a description of how and from what sources the data were collected for the various parts of this instrument.

1. The first step in collection of the data on a legislative initiative item was identification of the Legislative Proposal items in

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<sup>100</sup> Rakoff and Sarner, "Bill History Analysis," 403.

the environmental policy area. This was done by reviewing the Legislative Proposals for each of the years 1987, 1988, and 1989 for the six urban cities. The Legislative Proposals were obtained by requesting the needed proposals from the legislative liaison of each of the cities. In cases where a formal proposal was not available, a request was made for any information which may have been forwarded to the legislative delegations of the cities outlining issues of importance to the city.

These Legislative Proposals and any related correspondence provided a list of environmental issues and a brief description of each. If an item was included in a proposal for more than one year, a data collection form was completed for each year because support for an item or committee members reviewing a bill can change from one year to the next. It was important, for analysis purposes, to identify these potential differences by keeping data for each General Assembly session separately.

2. The Final Cumulative Index of Bills, Joint Resolutions, Resolutions, and Documents was consulted to provide the following data:

a. An identified item from a city's Legislative Proposal was checked against an index of legislators and the bills they sponsored or co-patroned to determine if a legislator from that city<sup>101</sup> sponsored a bill relating to the proposal item. If a local legislator sponsored a bill, the bill number and title was obtained from this section to serve as a reference for further research.

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<sup>101</sup> The list of local legislators is available from a number of legislative documents. For 1989, the list was obtained from The 1989 Virginia General Assembly Legislative Directory, produced by the Southeast Virginia Planning District Commission.

b. If a local legislator did not sponsor a bill pertaining to the identified item, the topical summary index of the Final Cumulative Index was consulted to look for a general category into which the item might fall and to determine if a related bill might have been introduced. One problem found with this summary was that items which were to be accomplished through city charter amendment were not easily identifiable because they were all simply listed as "charter amendments". All such listings for the three years under study for each of the six Hampton Roads city were checked by locating and reading the content of the proposed bill. In two cases, environmental issues had, in fact, been introduced in this manner.

c. Upon determination of the bill title and number from one of the above sources, the status summary of the Final Cumulative Index was used to determine to which committees the bill was referred and what the outcome of committee and floor action was. This provided a record of committees to which a bill was referred, dates of referral, what committee action was reported, if any, and by what vote the action was taken. This provided an indication of the level of support a bill received and which committees acted favorably upon it.

3. After obtaining this level of information from the Final Cumulative Index, the bill itself was consulted to determine who its co-patrons were and whether there were significant amendments made to the bill. These data were indicators of the level of support for the bill in terms of the number of co-patrons for the bill and the clout of the co-patrons.

4. Data pertaining to key supporters were obtained from the roll call votes for the bills under study. "Key" legislators are those, who by virtue of seniority, position in the General Assembly, or personality, are viewed to have influence over the legislative process. Seniority and position were determined from directories of the General Assembly. A general indication of which legislators have clout was available through polls published in local newspapers at the beginning of alternating General Assembly sessions.<sup>102</sup> Published articles containing such information were used to assess the perceptions of clout.

5. If no record was found of action on a specific legislative item, the local legislative liaison or a General Assembly staff member was contacted to determine if the item may have been handled administratively, included as an amendment to the state budget, or handled as an amendment to another bill. While the published state budget does not include detail by locality for most funding categories, the one legislative item involving a funding request was confirmed through that city's budget office to determine if state funds had been received. In cases where no action (administrative, legislative, or budget amendment) was taken in reference to an item of the Legislative Proposal, this was noted and some explanation as to why it was not pursued was sought from local staff or officials.

6. Upon compilation of all data from documentary sources, preliminary analysis was undertaken to look for determinants of the outcome

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<sup>102</sup> These surveys are in odd numbered years, after a legislative election has taken place to capture shifts in power brought about by retirement of senior members, changes in party balance, election of new members, and similar changes in the membership of the House of Delegates or the Senate.

(e.g., passed, failed, carried over) of a bill. Approximately 40 legislative items were initially researched. This represents all legislation introduced which related to the environmental issues of the Legislative Proposals of the six cities for the three years under study.

#### Interviews

Eleven interviews with legislators or legislative assistants were conducted in person at the legislator's place of business to provide a less formal structure to encourage responses to open ended questions. Interviews ranged in length from 20 minutes to one hour, depending on the amount of detail and examples the individual legislators provided during the interviews. Appointments missed due to the legislators' schedule changes were re-appointed for another day. One interview was conducted by telephone due to the changeable nature of that legislator's schedule.

Prior to telephone contact, legislators and legislative assistants to be interviewed were sent letters outlining the nature of the research, requesting an interview, and guaranteeing that no specific response would be attributed to an individual legislator. This assurance was critical to response from several legislators and provided for very candid responses regarding legislative process and actors. In addition to assurance of non-attribution, legislators were encouraged to grant interviews by mentioning others who had granted interviews (where permission for such name use had been given the researcher), and by agreeing to make available the results of this research, when completed.



These strategies, and a general willingness on the part of those contacted to assist in this research, limited non-responses.

The questionnaire forms were used to record all answers and comments provided during an interview. Questionnaires were printed with ample right margins to allow recording of comments of interest in the research but not specifically related to any question asked.

Interviews with other persons were conducted by telephone in that all these persons were in Richmond and had schedules which were changeable with little notice. In each of these cases, a phone contact was made requesting an interview. After initial contact (to ensure the person was in a position to grant an interview), a letter was sent providing the same assurance of non-attribution and a copy of the questions was included so the person could follow the questions during the interview. The exception to this were interviews with staff of the Division of Legislative Services which were able to be conducted in person in their offices.

Staff and observer interviews were 20 to 40 minutes in length, depending on the person's experience with legislative process issues. These interviews were also used to clarify process questions which had arisen during the research process (e.g., mechanisms for recording committee votes). As with the elected officials interview, the questionnaire forms were used to record all answers and comments provided during the telephone interview. The interviews provided information on what groups, agencies, or individuals supported or opposed a particular legislative item, and what other factors might have affected the outcome of legislation under study or legislation generally.

### Observations

Several days were spent observing the 1991 Session of the General Assembly. This served to validate the findings from the interviews and the secondary data sources regarding the processes of the General Assembly and to ensure that no major activity was observed which had not been previously noted. These observations included attending committee meetings of both the House of Delegates and the Senate, viewing proceedings on the floor of the chambers, and simply standing in the hallways of the General Assembly building and the Capitol to watch the informal interactions.

A fact which was validated by the observation of both the formal and informal actions was the importance of simply watching these interactions to persons wishing to affect legislative outcomes. Observing the legislators in action helps identify who is a key player on a given issue and who is disinterested in the issue. Knowledge of this could assist in lobbying efforts by helping to direct limited resources and by identifying legislators who would be supportive of legislation or who may need additional information on a particular issue.

One component of the legislative process which was not observed was the informal contacts which occur in private lunches and lobby sponsored social events. This omission was not considered a major threat to the study's validity because lobby-sponsored social events are often reported in the media with information as to which legislators attended and what interest groups were represented. Through this information, the relative importance of such meetings in affecting

legislative outcomes could be assessed. In addition, this component is measured in the interview data in a question concerning the importance of lobbies.

The issue of legislative studies outside the sessions of the General Assembly was not omitted from consideration in this study. Again, while the specific issues under study were brought to closure prior to the time of the study, the researcher's observations of and participation in various legislative study commission hearings and proceedings were used to help formulate questions and to probe the process.

#### Data Analysis

Data were processed by case and in two components--quantitative and qualitative--for each case. Quantitative data are those which are easily measurable such as committee and floor voting records and number of patrons. Factors such as the presence of studies and inclusion in the governor's budget are used to analyze trends in the factors which predict the outcome of an issue. Trends in which the interaction of two or more factors appeared to strengthen the likelihood of a positive outcome are also examined.

These data were collated and analyzed prior to performance of the interview portion of this research so that the quantitative data could inform and guide the interview process. As a further preparation for the interview process, a description of each case under study was prepared, providing information on the nature of the issue, how the issue was handled in the General Assembly (e.g., what committee

referrals were made, what actions were taken to forward or delay, etc.), and what was the outcome of the issue. Any preliminary explanation of factors affecting the outcome was also described. This case description helped focus questions for the interviews.

The interviews provided qualitative data as to the workings of the legislative process, and identified key actors in both the general legislative process and in specific interest areas. Interviews were also critical in confirming identified linkages between factors and in explaining any variations from predicted results. In analysis of the questionnaire, care was taken not to analyze any of the results until all interviews with a given group (e.g., legislators) were complete. This ensured that the researcher did not bias subsequent interviews by results or perceptions gained from earlier interviews. The possibility of this occurring was further reduced by the considerable time elapsed between the first legislator interview and the last. In addition, a General Assembly session intervened between interviews with legislators and other persons interviewed, creating further distance between interviews and lowering the possibility for interviewer bias.

By using archival data, news reports, and interviews, the validity of the results were confirmed in cases in which the various sources of data support one another. In cases in which data varied by source, an explanation of that variation was sought either in follow-up conversations with persons already interviewed or in the literature. By completing preliminary analysis of archival data prior to collection of interview data, some iteration was possible so that critical measures

not accounted for in initial research design and data collection were addressed.

From these findings, case studies are developed for each environmental issue describing the history for each bill introduced relative to that issue. Using public policy case study models such as those utilized by Gosling,<sup>103</sup> Kerwin,<sup>104</sup> and Slaughter,<sup>105</sup> the background to each issue is described from available information in the legislative proposals and from the records of the General Assembly. The legislative history is described including identification of critical decision points in the process, key actors, and outcomes (e.g., met requested need, partially met, did not meet) for each bill.

A principal component of the analysis which informs the case studies is a content analysis of every bill in a case and all amendments and substitutes to a bill. In a manner similar to that used by Rundquist and Strom,<sup>106</sup> different versions of bills were compared for changes in content or wording by the committees reviewing a bill. Building on this, an analysis is made to determine if the change substantively altered the intent of the bill. Floor amendments were reviewed for further changes, and study reports, if available, were

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<sup>103</sup> Gosling, "Wisconsin Item-Veto Lessons," 292-300.

<sup>104</sup> Cornelius M. Kerwin, "Transforming Regulation: A Case Study of Hydropower Licensing," Public Administration Review 50 (January/February 1990): 91-100.

<sup>105</sup> Cynthia Slaughter, "Sunset and Occupational Regulation: A Case Study," Public Administration Review 46 (May/June 1986): 241-245.

<sup>106</sup> Barry S. Rundquist and Gerald S. Strom, "Bill Construction in Legislative Committees: A Study of the U.S. House," Legislative Studies Quarterly 12 (February 1987): 108-111.

reviewed to determine if amendments were consistent with identified legal and technological requirements laid out in the studies.

Each case is summarized as to how well it fulfilled the legislative agenda request. While a view is provided of any known follow-up legislative efforts in an issue area to provide a broader perspective of the real outcome, these descriptions are limited to those which might inform the research problem of discerning factors critical to legislative outcomes so that the focus<sup>107</sup> of the research was not lost.

Each case is evaluated, using the factors affecting legislative outcome (defined factors) as the units of analysis. These factors fall into four broad categories and are derived from the propositions found in the literature and developed in the preliminary phases on this research. They are defined below.

#### Environmental Factors

- An issue which is perceived to be of interest or importance to a broad part of the constituency is more likely to pass.
- An issue for which a study has been completed or for which information as to impacts are available is more likely to pass.
- Controversial issues are less likely to be considered in an election year. Popular issues are more likely to be passed in an election year.

#### Political Factors

- An item placed before the legislature as part of the governor's budget is more likely to pass.

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<sup>107</sup> Patton addresses this concern well by advising to balance the fear of leaving something out with the fear of putting in so much that the focus is lost. Patton, Qualitative Evaluation and Research Methods, 429.

- Strong interest group support for a bill increases the likelihood of passage. Conversely, strong interest group opposition to a bill will decrease likelihood of passage.
- When no interest groups show support for a bill, it is more likely to be postponed.
- Bills with strong support of the dominant party are more likely to pass. Bills which cause partisan division are less likely to pass.
- Strategic voting is a major factor in the legislative process.

#### Institutional Factors

- The committee to which a bill is referred will affect its likelihood of passage because committee support is critical to a bill's passage.
- A bill whose patron is a legislator with status (e.g., leadership in party, seniority in the legislature) is more likely to pass.
- Five or more co-patrons for a bill increases its likelihood of passage.
- Patronage by a diverse group of legislators representing a cross section of localities increases the likelihood of bill passage.
- Tight legislative session schedules increase the likelihood of postponement or killing of bills.
- Bills which set a precedent are more likely to be killed or significantly amended.

#### Nature of the Bill

- Bills which are regulatory in nature are less likely to pass than those which do not restrict a constituency's activities.
- Bills which provide a service to a constituency are more likely to pass, provided they are not redistributive in nature.

The part which each of these factors played in the outcome of the legislation is assessed, by case. The case conclusions are then viewed

as a whole to provide conclusions as to the importance of these factors in the legislative process of the General Assembly.

Taken together, some factors emerge as strong determinants of legislative outcomes. Others which were weaker or which have no impact on the cases under study, are examined to determine whether there were reasons why they were weak. They are also analyzed to determine whether this phenomena was peculiar to environmental legislation, to Virginia legislation as a whole, or whether other unmeasured factors were at work to change the environment in which state legislatures function to such a degree as to call into question findings from previous studies.

The use of multiple cases allows pattern matching to be done to determine whether an outcome was as predicted, given the array of factors brought to bear on a specific case. In that the selected cases include both issues which did pass and did not pass, literal and theoretical replication possibilities are examined. That is, those proposed bills which did not pass are examined for differences in patterns of the defined factors from those that did pass. Both types of cases support the theoretical propositions underpinning this research.

A second part of the conclusions deals with what the findings say to local policy actors attempting to influence the legislative process of the General Assembly. These findings focus on the local actors, not on potential reform in the General Assembly, as it is not the intent of this research to study the General Assembly to the extent necessary to make recommendations for change. Rather, the focus is urban policy actors and what they might do to provide more effective interaction with



the state legislative process, with or without change in the process state-wide.

#### Summary

The methodology of this study is designed to answer two research questions: (1) How does the Virginia General Assembly process bills which are proposed by local governments in Virginia? and (2) Are there identifiable factors in this legislative process which the local governments could influence to improve the outcomes of their legislative initiatives? The research design uses multiple-case studies with embedded units of analysis. This design was selected because: (1) It sought answers to "how" and "why" questions; (2) The researcher could not control the behavioral events being studied; and (3) It focused on contemporary events. The multiple case method was chosen because no single issue was so unique that it's study alone would provide credible answers to research questions; and the use of multiple cases should provide for replication of the research findings, thereby strengthening the reliability of these findings and their usefulness in application to real life problems.

## CHAPTER IV

### PRESENTATION AND ANALYSIS OF DATA

#### Introduction

This study is designed as basic research in its focus on investigating the workings of the Virginia General Assembly as they relate to existing theory on the legislative process in other states and the federal government. It seeks to provide insight into how well the Virginia example fulfills propositions drawn from the literature and how it differs from the legislative process described in other states and at the national level. The research also addresses an actual problem with which urban governments in Virginia and other states are faced: that of gaining necessary state legislation for critical local government enabling powers, for statewide legislation of particular importance to urban areas, and for financial support for urban programs and populations. This applied research focus seeks to describe the current legislative process and, in so doing, provide a clearer picture to urban legislative actors of how they might better influence the legislative process for the advantage of their constituents.

More specifically, the research looks at the success or failure of environmental issues contained in legislative proposals of the cities of Chesapeake, Hampton, Newport News, Norfolk, Portsmouth and Virginia Beach for the years 1987, 1988 and 1989. It seeks to disprove the null hypothesis that there are no identifiable factors which explain why an

environmental issue proposed for General Assembly action succeeds or fails. A corollary to this hypothesis is that there are no identifiable factors which would help predict the outcome of a particular item of a legislative proposal. The data presented are ten case studies which center around environmental concerns articulated by the localities. They include both cases which succeeded and failed in the legislative process over the three years under study and were impacted by a variety of factors which affected their outcome.

Each study includes: (1) A legislative history of bills and resolutions relevant to the items identified for study from the cities' legislative proposals; (2) A content analysis of bills proposed and enacted to assess whether they fulfilled the request presented by a city; and (3) An analysis of which factors identified in the literature as determinants of legislative outcome were apparent in the cases under study. These presentations incorporate responses from interviews conducted with persons involved in the legislative process as participants or observers.

Case Study 1: Ban on Phosphates Legislation

Legislative Summary and History

This issue was included in the 1987 Legislative Proposal for the City of Virginia Beach as one of 28 items identified in its Legislative Proposal to its delegation to the General Assembly. The legislative proposal supported a ban on the manufacture, sale or use of phosphate detergents within the Commonwealth. The Legislative Proposal cited as reasons for support of this ban:

1. The degradation of state waters and the Chesapeake Bay attributable to phosphates;
2. The increased cost of treating waste water due to the phosphates in the water and the impact of the need to dispose of increased sludge related to phosphate treatment; and
3. The availability of acceptable alternative cleaning agents in the market place which have been proven effective in other states in the United States.

The proposed legislation was viewed as a means to address one concern with water quality at no added cost to the consumer. Governor Baliles announced his support for such a ban prior to the beginning of the 1987 Legislative Session as a part of his environmental initiatives.<sup>108</sup> Legislation was introduced in the 1986 Session by Senator

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<sup>108</sup> Bill Byrd, "Major struggle expected over ban on phosphates," Norfolk Virginian Pilot, 11 January 1987, sec. A, 6.

Gartlan (D-Fairfax), one of the more senior senators and one ranked as among the ten senators with the most clout.<sup>109</sup>

The legislation proposed a prohibition of sale of cleaning agents containing phosphates as an amendment to Title 62.1--Waters of the States, Ports, and Harbors--of the Code of Virginia. The bill sought to protect the water quality of the state by eliminating a proven source of pollution through limitations on sale of cleaning agents containing phosphates and through provision for seizure and forfeiture of any non-complying cleaning agent, and prosecution of persons knowingly selling, manufacturing, distributing, or using any violating cleaning agents. The proposed legislation in 1986 was carried forward to the 1987 Session in the Senate Committee on Education and Health. This legislation was amended and enacted during the 1987 Session, meeting the intent of the Legislative Proposal item for the City of Virginia Beach.

#### The Legislative Process

While the ban on phosphates was proposed in the 1986 Session, primary action regarding this legislation occurred during the 1987 Session. This action is discussed below.

#### 1986 Action

Senator Gartlan offered a bill to ban cleaning agents containing phosphates in January 1986. Senator Gartlan, while not serving on the Senate Committee on Agriculture, Conservation, and Natural Resources,

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<sup>109</sup> Margaret Edds, "Rating Virginia's legislators," Norfolk Virginian-Pilot and Ledger-Star, 8 February 1987, sec. C, 2.

has served on a number of commissions of environmental interest, including service as chairman of the Chesapeake Bay Commission. With this background, he often serves as a patron or co-patron of environmental issues of interest to northern Virginia. As proposed by Senator Gartlan, and supported by two co-patrons in the House, the bill proposed to:

- Amend the Code of Virginia Title 32--Health;
- Allow limited exceptions (up to 8.7 percent phosphate) for specific food equipment cleaning applications or in cases where no adequate substitute cleaner existed; and
- Provide for enforcement by the Board of Health with violations being Class 1 misdemeanors.<sup>110</sup>

As required by the Rules of the Senate 8(d), the bill was referred to the appropriate standing committee by the Clerk of the Senate. The Rules of the Senate list the legislative areas to be handled by each standing committee. Since Senate Bill 248 proposed to amend the Health Chapter of the Code of Virginia, it was referred to the Senate Committee on Education and Health. (If the bill had been proposed as a water conservation issue, it could have been referred to the Senate Committee on Agriculture, Conservation and Natural Resources.) The Senate Committee on Education and Health moved to carry the bill over into the 1987 Session for consideration. This represents one of several actions which a Senate or House committee can take regarding a bill. These actions are described below.

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<sup>110</sup> Commonwealth of Virginia General Assembly, Senate, A Bill to Amend the Code of Virginia relating to prohibition on the sale of cleaning agents containing phosphates; penalty. 1986 Session, S.B. 248, (January 21, 1986).

- Report without amendment: This action forwards a proposed bill to the floor of the chamber for action without changes to the bill as offered by the patron.
- Report with amendments: This action forwards a proposed bill to the floor of the chamber for action but recommends amendments to the bill offered by the patron. The chamber may accept the amendments, accept the bill without the amendments, or may reject the bill. The patron may or may not accept the proposed amendments.
- Recommend re-referral: This action recommends that the bill or portions of the bill be referred to another standing committee for review and action. This occurs when a bill is not deemed as germane to the committee to which it was sent or when a bill has provisions which might impact other committee areas of interest (e.g., an environmental bill which provides local government authority might be referred from the committee handling environmental issues to that reviewing local government issues).
- Carry over to the next Session: This action continues a proposed bill on the agenda of the committee until the next legislative session. Bills can only be carried from an even numbered year to an odd numbered year. This was the case with the Phosphorus ban bill which was carried from the 1986 Session to the 1987 Session. This action is taken to allow additional time for study or consideration, or can be taken to defer a decision.
- No action: This, quite simply, means the committee chose to take no action of record. This effectively kills the bill in that chamber unless the patron can persuade the committee to reconsider the bill, or can attach the item to a germane bill on the floor. This type of action is reported in the House record but without any indication of which legislators supported or opposed the bill.
- Pass by indefinitely: This action is a vote to do nothing at the time on a bill and usually serves to kill the bill. As with "no action" the patron may attempt to revive the bill through committee reconsideration or through floor amendment. This action differs from "no action" in that there is a record of votes for and against the motion to pass by, thus giving bill supporters some sense of committee support.

The action of carrying the bill forward placed it on the calendar early in the 1987 Session, allowing ample time for consideration of the bill during that session.

1987 Action

## Senate Bill 248

The Senate Committee on Education and Health considered Senate Bill Number 248, as it was carried over from the 1986 Session, which proposed to ban phosphate cleaning agents. The Committee on Education and Health proposed a substitute bill which included provisions to:

- Amend the Code of Virginia Title 62--Waters of the State, Ports and Harbors;
- Allow limited exceptions (up to 8.7 percent phosphate) for specific dish-washing detergents or in cases where no adequate substitute cleaner existed;
- Exclude numerous commercial application cleaners from the provisions of the bill; and
- Provide for enforcement by the Board of Agriculture and Consumer Services with violations by manufacture or distribution being Class 1 misdemeanor and sale or use violations being a Class 4 misdemeanor.<sup>111</sup>

The major changes in the substitute were to consider the legislation under the "Waters of the State" title of the state code, rather than under the "Health" title, as proposed by Senator Gartlan. In addition, the substitute provide exemptions for health facilities, commercial laundries, laboratories, and many other commercial and industrial users of cleaners. Senator Gartlan's bill exempted only dairies and several specific cleaning agents containing phosphates.

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<sup>111</sup> Commonwealth of Virginia General Assembly, Senate, A Bill to Amend the Code of Virginia relating to prohibition on the sale of cleaning agents containing phosphates; penalty. 1987 Session, S.B. 248, Senate Committee on Education and Health Amendment in the Nature of a Substitute, (January 22, 1987).



The substitute bill was accepted by the patron, Senator Gartlan, and was reported to the Senate floor by a 15 to 0 vote of the Committee on Education and Health. The Senate approved the substitute bill by a vote of 35 to 4 and forwarded it to the House of Delegates for action. It is of note that those voting against the bill were not uniformly against the ban but, rather, thought it was too weak in that it addressed primarily household use of phosphate detergents and exempted most commercial users. This concern was articulated by Senator Emick (D-Fincastle) who said "The only victim (of the bill) is the housewives of Virginia. Every potential major polluter has been somehow or another taken care of."<sup>112</sup>

In the House, the bill was referred to the House Committee on Conservation Natural Resources due to the nature of the substitute bill which proposed to amend the Code of Virginia section dealing with waters of the state. The Rules of the House has a much less specific list of areas of responsibilities for each committee, leaving more discretion to the Speaker regarding assignment of bills. However, precedent is largely used in assignment of bills. The Committee on Conservation and Natural Resources reported the bill to the floor by a vote of 16 to 0 with minor amendments. These amendments listed dairies as an exempt industry and clarified language regarding violations of the legislation. The House passed the amended bill by a vote of 91 to 8.

Given that the House amended the Senate bill, the bill was then returned to the Senate for acceptance or rejection of the House

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<sup>112</sup> Bill Byrd, "Senate approves ban on phosphates," Norfolk Virginian Pilot, 29 January 1987, sec. A, 3.

amendments. If the Senate did not approve the House amendments, the bill could have died, the House could have altered its action, or an acceptable alternative could have been worked out between members of both chambers. The Senate approved the House amendments thus completing legislative action on Senate Bill 248, and allowing it to be forwarded to the governor for action, who signed it into law.

#### House Bill 1038

Prior to receipt of the Senate Bill, the House of Delegates was considering its own version of a bill to ban phosphate detergents. The House Committee on Conservation and Natural Resources considered House Bill Number 1038, which proposed to ban phosphate cleaning agents. As proposed by patron Delegate Murphy (D-Westmoreland) and agreed to by 62 co-patrons, the bill proposed to:

- Amend the Code of Virginia Title 62--Waters of the State, Ports and Harbors;
- Allow limited exceptions (up to 8.7 percent phosphate) for specific dish-washing detergents or in cases where no adequate substitute cleaner existed;
- Exclude numerous commercial application cleaners from the provisions of the bill; and
- Provide for enforcement by the Board of Agriculture and Consumer Services with violations being Class 1 misdemeanors.<sup>113</sup>

By a vote of 16 to 3, the committee reported a substitute bill by way of amendment to the floor of the House for action. The amendment changed penalties, making it a Class 1 misdemeanor to sell, manufacture,

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<sup>113</sup> Commonwealth of Virginia General Assembly, House, A Bill to Amend the Code of Virginia relating to prohibition on the sale of cleaning agents containing phosphates; penalty., 1987 Session, H.B. 1038, (January 19, 1987).

or distribute cleaning agents in violation of the proposed code sections. Use of such agents would be a Class 4 misdemeanor.<sup>114</sup> The House, by a vote of 88 to 10, approved an amended version of the bill which removed language which exempted laundries serving hospitals and limited penalties to persons knowingly violating the ban.

The bill then was sent to the Senate for action where it was referred to the Committee on Education and Health (since they had taken up the original proposed Senate bill on the ban). By a vote of 14 to 0, the committee reported the bill to the floor with minor amendments to insure the wording matched that of the approved Senate bill. The Senate approved the bill by a vote of 36 to 4. It is evident that considerable coordination took place on the two bills. House Bill 1038 was reported out of Senate committee with the minor wording amendments on February 12. This was the same day as the second reading on the House floor of Senate Bill 248, as amended.

Given House agreement on the bill, the bill was forwarded to the Governor for action. The governor signed the bill into law. Since the House and Senate bill were identical, no problem arose by Governor Baliles signing both bills into law. This action merely allowed both patrons to say their bill had succeeded. If wording had been different, either the governor would not have signed one or the bill with the later signature would be effective unless changed by both chambers.

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<sup>114</sup> Commonwealth of Virginia General Assembly, House, A Bill to Amend the Code of Virginia relating to prohibition on the sale of cleaning agents containing phosphates; penalty, 1987 Session, H.B. 1038, House Committee on Conservation and Natural Resources Amendment in the Nature of a Substitute (January 29, 1987).

The passage of this bill partially fulfilled the desired proposed legislation from local governments in that the legislation did serve to lower the level of phosphates in waste water but did not impose a total ban on use and sale of phosphates in the state. The legislation, however, must have been deemed a significant improvement in the problem of water quality relative to phosphates because proposals were not forthcoming in subsequent legislative sessions to strengthen the legislation or extend the ban to those activities exempt under the legislation as passed.

#### Conclusions from the Case Study

This case shows a successful effort to pass legislation which was controversial and had considerable lobbying surrounding it. The importance of various factors played to the passage of this bill is discussed below.

#### Environmental Factors

##### Saliency of the Issue

According to a majority of legislators interviewed for this study, a good bill will pass without lobbies, party support, or many other factors identified as affecting legislative outcomes. Conversely, a bill without merit may be reported out of committee only to be killed on the floor or in the other chamber. This phenomena, in the opinion of those interviewed, is due to most members of the General Assembly voting as their conscience dictates and supporting a bill which has merit or is perceived as furthering the welfare of their constituency.

The importance of the perceived saliency of a bill in influencing a legislator's vote was demonstrated in this case by Delegate Forehand's (D-Chesapeake) action in which he proposed amendments to delay implementation of the bill to help commercial companies dispose of inventories of existing phosphate products. Delegate Forehand felt the amendments represented legitimate concerns<sup>115</sup> but, upon failure of the amendments, Forehand cast his vote for the bill. Clearly, the issue was important enough to his constituency that he felt compelled to cast a vote for it. The importance of the phosphate ban to the state-wide constituency was demonstrated for the legislators in a poll conducted during the 1987 legislative session which found that 54% of those interviewed supported the ban, with only 28% opposing the ban.<sup>116</sup>

#### Studies and Information

Several legislators said that their "level of comfort" to support a bill is affected by information regarding the success of similar proposals in other states. In this case, Maryland and the District of Columbia were often mentioned as successful examples of a phosphate ban. Senator Gartlan noted this in a speech in which he said "I don't know a single housewife in the District of Columbia or Maryland who lives in fear and trembling of a phosphate ban."<sup>117</sup> The assurance that

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<sup>115</sup> Kent Jenkins, Jr. "House panel OKs seat-belt bill, phosphates ban," Norfolk Virginian-Pilot, 3 February 1987, sec. D, 5.

<sup>116</sup> "Voters Tough on Conflict of Interest," Norfolk Virginian-Pilot, 25 February 1987, sec. A, 1.

<sup>117</sup> Byrd, "Senate approves ban," 3.

alternatives to phosphate detergents<sup>118</sup> were available allayed the concerns of some legislators. The literature indicates that legislators look to their region of the country when designing new programs but it does not tie this to specific legislative outcomes. The reliance of General Assembly members on experience of other states may relate to the part-time nature of the General Assembly and the need for members to rely on external sources of information.

#### Legislative Elections

In that the Phosphate Ban legislation was introduced in 1986 and was carried forward and enacted in 1987, election schedules do not appear to have been a contributing factor to the carry over because there were no legislative elections in 1986. Although not documented, it is possible that the passage of the phosphate legislation in both the House and the Senate in 1987 was attributable, in part, to the desire of some delegates and senators to have a positive vote on an environmental issue for the elections in the fall of 1987.

#### Political Factors

##### Support of the Governor

Several factors changed between the 1986 Session and 1987 Session to bring about passage of the bill. Key among these was the backing of Governor Baliles. The ban was a key point in the governor's

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<sup>118</sup> Mary Reid Barrow, "Ban on phosphates urged for cleaner Bay," Norfolk Virginian-Pilot and Ledger-Star, 13 January 1987, sec. The Beacon, 5.

environmental package<sup>119</sup> and was presented as an inexpensive way to assist in clean-up of the Chesapeake Bay. Several persons interviewed indicated that this certainly was a major contributor to passage of the bill because Baliles had a very strong rating with the General Assembly at that point in his tenure.

While the literature indicates that support of the chief executive helps in passage of a bill, persons interviewed said that in the Virginia General Assembly this can be tempered by the relationship which the chief executive has with the legislators. In this case, Governor Baliles had a high standing, having had a very successful tenure, so that his backing helped move support behind the bill. Governors with adversarial or mixed relations with the General Assembly might not receive support for bills they back.

#### Interest Group Support and Opposition

This bill had strong lobbying activity both for and against it. The extent of this lobbying was captured in a quote by Senator Gartlan at the start of the 1987 Session in which he observed "I see signs that the soap lobby is cranking up for an even greater effort than they exerted last year."<sup>120</sup> The chemical manufacturers spearheaded opposition to the bill, arguing that it would "take away our right to chose

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<sup>119</sup> Byrd, "Senate approves bans," 3.

<sup>120</sup> Byrd, "Major struggle expected," 6.

the laundry detergent best for our needs,"<sup>121</sup> and that it constituted a hidden tax on consumers by raising the cost of detergents in order to protect the environment. Joining the manufacturers were businesses<sup>122</sup> which would be affected by the ban. A television and print media campaign was undertaken by this coalition during the 1987 legislative session to urge citizens to object to the proposed ban.

The Chesapeake Bay Foundation organized support for the bill among environmentalists. It also provided information to the public and the legislators which explained the environmental effects of phosphate on waterways and which attested to the effectiveness of the phosphate bans in other states. This effort did much to defuse a number of the issues raised by the opposition to the bill. Data provided showing that alternatives to phosphate detergents were effective and that phosphate bans did help water quality did much to garner support for the ban.

This is an example of a key role which lobbyists play in the legislative process--that of expert in a field. Given the part-time nature of the Virginia General Assembly, legislators are limited in both the time and staff they have to research an issue. Lobbyists are a valuable source of information on a subject and, according to responses of legislators in interviews, the lobbyists are relied upon to provide such information. The legislators also said that they depend on lobbies which have proven integrity in their provision of information. Lobbies

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<sup>121</sup> Bill Byrd, "Ads criticize anti-phosphate bill," Norfolk Virginian Pilot, 20 January 1987, sec. D, 3.

<sup>122</sup> "General Assembly gets down to business," Norfolk Virginia-Pilot, 2 February 1987, sec. Business Weekly, 7.



which provide partial or inaccurate information on an issue lose credibility thereby undermining their lobbying efforts on future issues.

Another major group of supporters of the ban was local governments. This group supported the ban due to the financial burden placed on local governments by the requirement to treat wastewater which contained large amounts of phosphates. Limiting phosphates in water lowered waste-water treatment costs in states where a ban had been imposed and, more importantly, would help Virginia localities save some of the two billion dollars in estimated<sup>123</sup> costs which would be required to upgrade wastewater treatment plants to handle phosphate.

Ultimately, the evidence presented by the lobbies supporting the ban were more convincing than that provided by those opposing the ban. The number of interest groups speaking for or against the bill was less a determinant of outcome than who (local governments and environmentalists versus industry and business) spoke and what data they provided. This finding is not consistent with some legislative studies, such as Hamm's,<sup>124</sup> which suggest a large number of interest groups speaking to an issue increase the likelihood of passage. It is, however, consistent with responses of legislators and legislative observers interviewed in this study who said that the number of groups are less important than the credibility of the groups speaking and the breadth of constituency representation of the groups.

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<sup>123</sup> Barrow, "Ban on Phosphates urged", 5.

<sup>124</sup> Hamm, "The Role of 'Subgovernments'", 326.

### Party Support

The patron list for this bill indicated strong bi-partisan support for the bill with 16 Republicans on the list of sixty-two patrons. Party support is not considered a major factor in the Virginia General Assembly because of the dominance of the Democratic party in both chambers. However, in the House of Delegates there is a large enough bloc of Republicans so that if they chose to oppose a bill as a bloc, and attracted conservative Democrats to their point of view, they could create a majority to vote against a bill. The appearance of larger representation from both parties on the co-patron list for this bill indicated that such a bloc action was not likely.

### Institutional Factors

#### Committee Support

While the factors discussed above are important determinants of legislative outcomes, the importance of the committee in the Virginia General Assembly cannot be understated. Persons interviewed for this study characterized the importance of General Assembly committee action in the outcome of a bill as "extremely important," "98% of the fate of the bill", and "very important, but varies with the committee."

In this case, the patrons of both the Senate and the House bill were not members of the committees acting on the bills. However, co-patrons included twelve members of the House Committee on Conservation and Natural Resources, and three members of the Senate Committee on Education and Health. Both committee chairs were co-patrons. This type of support ensures that the bill will be spoken for in committee and,

given the large number of committee members supporting the bill, will improve chances of the bill being reported favorably to the floor.

The inclusion of committee chairs as co-patrons is important because the chair can help a bill by ensuring it is taken up, by assigning it to a "friendly" sub-committee, and by placing it on the agenda of the committee at a time which will improve outcome (e.g., at a time when the committee is not tired and has not had a controversial issue before them, or at a time when persons speaking for the bill are available to appear before the committee). In that all these actions are up to the discretion of the committee chair, support of a bill by a committee chairman can be critical. Lack of support of the chair could cause a bill to languish; opposition by the chair can kill a bill. This view was supported by nine of 18 respondents interviewed for this research. They characterized the power of the agenda setter to influence a bill as considerable and mentioned committee chairmen as some of the strongest members in this regard.

The perceived stance of a committee on a given bill can affect the patron's choice of committee to consider the bill. While the Clerk of the Senate and the Speaker of the House determine committee referrals, the language used in drafting a bill may affect its referral. In the phosphate ban case, this does not appear to have been a consideration even though the referral of a water pollution issue to the Senate Committee on Education and Health (as opposed to Agriculture, Conservation, and Natural Resources) appears to be unusual. There were no key members of the Committee on Agriculture, Conservation, and Natural Resources voting against the bill, so the bill probably would have fared

as well in that committee. The fact that the bill, when amended to affect the Waters of the State section of the Code of Virginia, was not recommended for re-referral to the Committee on Agriculture, Conservation, and Natural Resources, indicates the support this bill had and the cooperation which was taking place informally to assist its passage.

#### Clout of Key Legislators

Senator Gartlan, the patron for this legislation the first year, is a senator with considerable clout yet the bill was not acted upon. However, his clout probably ensured that the committee carried the bill over to the next session rather than kill it outright. This supports findings in both the literature and among persons interviewed that the clout of a patron is a factor in the outcome of proposed legislation. Persons interviewed indicated that this clout was not simply based on seniority but was tied to the perceived expertise and subsequent trust which legislators have in given subject areas. Senator Gartlan has often introduced environmental legislation and is listened to in that area. Despite his standing, the proposed phosphate ban did not pass in 1986. This was due, in part, to the lobbying efforts of manufacturers and industry, but also indicates that patron clout alone does not insure passage of a bill.

A strong reason for the passage of the phosphate ban was Senator Gartlan's willingness to seek out and foster compromise on the issue. This was clear in his acceptance of the amended version of his original bill. The original bill offered few exemptions. As passed, the bill applied almost solely to household users of phosphate detergents. While

this was criticized by some legislators, removing household sources of phosphate eliminated a major source of phosphates in wastewater and thus accomplished at least part of the intent of the bill. The outcome of the bill would have been much less sure without these concessions because there were questions as to whether acceptable alternatives to phosphate containing detergents existed for some commercial and industrial applications.

#### Number of Co-Patrons

The phosphate ban legislation proposed in 1986 had one patron and two co-patrons. The House Bill proposed in the 1987 session included 54 delegates as co-patrons and eight senators. Of these, four of the delegates ranked among the top ten delegates in terms of legislative clout<sup>125</sup> and three senators were among the top ten senators. Neither of the senators from Virginia Beach signed as co-patrons, despite the inclusion of this item in the City's legislative proposal. However, four of the city's five delegates signed as co-patrons of the bill.

While the literature and persons interviewed both indicate that a larger number of patrons can help in the passage of a bill, this case demonstrates a point which several persons made in interviews. This point was that with enough patrons success is guaranteed. In this case, with fifty-five delegates signed on in support of the bill, a majority of the delegates showed support which guaranteed floor passage (unless they changed their vote). As a lobbyist for the chemical industry said

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<sup>125</sup> Edds, "Rating Virginia's Legislators," 2.

"I can count." "It will pass."<sup>126</sup> Such support, however, does not ensure passage in the General Assembly because the floor cannot consider a bill that is not reported out by committee. The number of patrons can indicate to the committee the level of support and might help a bill through committee. On the other hand, a hostile committee could alter a bill so that original co-patrons would not support it.

#### Legislative Schedule

Senate Bill 248 to ban phosphates was first offered January 21, 1986, within the first ten days of a long legislative session. This indicates that the press of business was not the reason for the deferral to the next session. Rather, the delay to the next session gave legislators more time to study this controversial issue and assess the strength and position of the interest groups speaking to this bill. Whether intended or not, the delay also gave the lobbyists an opportunity to mount more intense informational campaigns both across the state and with influential legislators.

This illustrates one of the factors which affects the outcome of issues in a part time legislature--that of action in session interims which can change views and positions on legislative action. Interim action can work for or against the passage of a bill in that it gives legislators time to hear what the constituency position is on the issue but also allows interest groups time to lobby for their position. In the phosphate ban case, the interim action of the environmental lobbies worked in favor of the bill's passage.

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<sup>126</sup> Byrd, "Panel unanimously backs ban," 15.

### Precedent Setting

While this bill disallowed use of certain chemicals in order to protect the environment, this certainly was not the first time such action had been taken. The federal Environmental Protection Agency routinely removes chemicals from production and distribution based on proven damage to the environment. DDT is but one example of this type of action at the federal level. Virginia had its own experience with the chemical Kepone and so certainly was aware of the need to remove products from production. While phosphate did not create the severe environmental hazard of these other chemicals, data were available to show conclusively that phosphates have a negative impact on aquatic habitats. Thus, the Virginia phosphate ban was not breaking new ground and setting new precedents for regulation of individual citizens and businesses in Virginia.

### Nature of the Legislation

#### Regulatory Legislation

Without question, this legislation was regulatory in nature in that it prohibited certain activities and provided for penalties for violation of the regulations. It was this regulatory nature which caused delay and ultimate compromise on the bill so that exclusions were provided in cases where a hardship would be created for industries with limited alternatives to the use of phosphates. These exclusions ultimately removed many businesses which opposed the ban from the debate and allowed the bill to pass in a manner which largely applied to home use of phosphate detergents. In that the majority of constituents

surveyed supported the ban, the bill passed was, in essence, self-regulation by individual consumers. As Senator Gartlan put it "I don't think it's unreasonable to expect that the housewives of Virginia are as interested in clean water as they are in clean laundry."<sup>127</sup> As such, passage became much more certain because legislators will support bills in which constituents seek to regulate themselves.

#### Service Provision

On its face, the phosphate ban legislation could not be construed as providing a service to a constituency group, thus improving chances of passage. However, local governments were provided an indirect service through the ban because they benefitted from passage of the ban by lowering demand on wastewater treatment facilities. As such, the passage of the ban helped local governments avoid massive costs in treatment plant upgrades. This perspective, coupled with environmental concerns, certainly encouraged some legislators to vote for the phosphate ban.

Perhaps the final conclusion of this case study is that many factors play a part in the successful passage of a bill. While it takes the combination of all these factors to guarantee a bill's success, many of these factors can cause a bill to fail.

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<sup>127</sup> Byrd, "Senate approves ban," 3.



Case Study 2: Erosion and Sediment Control Legislation

## Legislative Summary and History

The Erosion and Sediment Control Law is contained in Section 21 of the Code of Virginia. This law controls land disturbing activities to limit the impact such activities have on soil and water conservation goals. The law provides for a permitting process, local government review of plans for soil disturbing activities, inspection of soil disturbing activities, and criminal penalties for persons violating provisions of the law.

In 1987, as one of 25 issues identified in its Legislative Proposal to its delegation to the General Assembly, the City of Newport News requested a change in the Erosion and Sediment Control Law. The requested change would allow localities to impose civil penalties with monetary fees for violations of the law so that corrective action could be taken where unapproved or unmanaged soil disturbing caused damage to the environment of the city. As outlined in the Legislative Proposal, this change would allow an alternative to criminal court prosecution for misdemeanor offenses. This was desirable because court action did not remediate the damage, often was not found in favor of the city, and was time consuming to prosecute. Journals of the House of Delegates and of the Senate show no bills introduced to pursue this legislation in 1987.

In 1988, the City of Newport News included in its Legislative Proposal a general request to allow cities the authority to enact civil penalties for violations of the fire code, zoning code, and other local

permit/inspection controlled activities. Such a grant of power would include violations of the Erosion and Sediment Control Ordinance. While no such wide grant of power was enacted, amendments to the Erosion and Sediment Law enacted in the 1988 Session of the General Assembly did include provisions for civil penalties for violation of provisions of the law. This effectively met the intent of the proposed item in the City of Newport News's Legislative Proposal.

#### The Legislative Process

There are two processes which occurred regarding this legislative initiative: (1) That of the proposal of 1987 upon which no action was taken; and (2) That of 1988 where legislation achieved the desired effect. These will be discussed below.

#### 1987 Action

The 1987 action, was essentially, no action. Although the City Council of Newport News requested an amendment to allow civil penalties, review of proposed bills for the 1987 Session of the General Assembly show that no senator or delegate representing Newport News (or other localities) introduced such legislation.

In a question posed to legislators who were interviewed regarding how they determine what legislation to introduce, there was a wide spectrum of responses given (Appendix VIII). Key among these are: (1) The likelihood of an issue gaining passage at that time; and (2) The legislator's perception of the merit of the issue. Relative to items in the legislative proposals of local governments, several legislators made

comments such as "We're elected too, we represent the citizens as much as the city councils do."

Failure to introduce this initiative in the 1987 Session appears to be due to the first criteria--that of likelihood of passage. This can be inferred from the following findings:

1. When the amendments to the Erosion and Sediment Law were considered in the 1988 Session of the General Assembly, three of the four assembly members representing Newport News supported the bill, indicating that they did not disagree with the requested legislation.

2. The report of a study committee on water quality standards chaired by Senator Gartlan (D-Fairfax) was forwarded to the General Assembly in the 1987 Session but adequate time was not available in the session to fully consider the recommendations of the study. In the absence of strong peer and constituency support to move forward with a legislative issue which might relate to this study and, given Senator Gartlan's stature in the General Assembly, it was deemed politically prudent to wait until the 1988 Session to address changes to the Erosion and Sediment Law.

#### 1988 Action

Action supporting the Newport News request for civil penalties for violation of the Erosion and Sediment Law was contained with other proposed amendments to the law in Senate Bill 152 in the 1988 Session of the General Assembly. The bill patron was Senator Gartlan. The bill was referred to the Senate Committee on Agriculture, Conservation and Natural Resources where amendments to the proposed bill were offered.

The most substantive of these changes was deletion of language which would have made each day of a violation a separate offense, punishable by imprisonment and fines. The vote for the amended bill was reported from the committee by a vote of 9 to 5. While this indicated division over the issue on the committee, the basis for the division was not discerned during this study. The record of the vote indicates it was not a vote along party lines, geographic lines, or urban/ rural interests. The Senate approved the bill by a vote of 26 to 14.

The Senate bill was forwarded to the House of Delegates where it was referred to the House Committee on Conservation and Natural Resources. By a vote of 14 to 0 this committee approved an amended version of the Senate bill. While most changes to the Senate bill were of a technical nature, more substantive changes included the lowering of allowable civil penalties from \$10,000 for each violation to \$2,000 and language directing to which agents civil penalties would be paid. The House approved the amended version by a vote of 88 to 2. The Senate accepted the House version by a vote of 33 to 6. The bill was signed by the governor to be effective July 1, 1988.

#### Conclusions from the Case Study

There are several process issues which this case study illustrates. A discussion of these follows.

Environmental Factors

## Saliency of the Issue

The issue of erosion and sediment control was related to that of general water quality issues. As such, the erosion and sediment law was one which had wide-spread support in the 1986 and 1987 sessions of the General Assembly because of the interest in the Chesapeake Bay initiative at that time. The specific amendments requested by the City of Newport News were considered "fine tuning" of the legislation based on experience with implementation and, as such were viewed positively by the legislative delegation of the City. In fact, when the amendments to the Erosion and Sediment Law were considered in the 1988 Session of the General Assembly, three of the four assembly members representing Newport News supported the bill (the fourth did not record a vote on the issue).

In addition to the environmental interest which the erosion and sediment control legislation had generally, the specific request for civil penalty authority would be attractive to judicial officials who would see this as a means to expedite the handling of infractions of the law. The range of interested constituencies made this a bill which engendered wide legislative support. As one legislator said of the erosion and sediment control issue, "this bill was pro-public."

This view of ultimately doing what is "pro-public" is supported by the interview responses of this research. Seventeen persons interviewed responded to the question asking them to characterize the role of a legislator as either fulfilling the dictates of the constituency or exercising judgement to do what is best for the public. Of these, five

characterized the role as doing the constituency's bidding, four said they voted their conscience, four characterized it as a blend of the two models, and the remainder said it depended on the issue. It is of interest that more senior members of the legislature tended to be those who said they followed what they viewed as their constituency's wishes. As one senior legislator said, "those of us who survive do what the voters want".

#### Studies and Information

In interviews with members of the General Assembly it was found that they were more likely to support legislation, particularly concerning technical areas such as environmental issues, if there was a legislative study which would help inform their decision making. Such studies not only increase their understanding of the issues, but also provide a counterpoint to lobbyists and interest groups who may provide only one view of an issue.

In the 1986 Session of the General Assembly, a resolution to continue a study of water quality standards was passed. The continuing study was to include recommendations for needed changes in "existing laws, regulations, and administrative programs."<sup>128</sup> This study was completed by a joint committee of the House and Senate which was chaired by Senator Gartlan (D-Fairfax). Senator Gartlan was ranked as the fifth

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<sup>128</sup> Commonwealth of Virginia General Assembly, Joint Subcommittee Studying the Problems Associated with Nutrient Enrichment and Related Water Quality Standards in the Waters of the Commonwealth, Report to the Governor and the General Assembly of Virginia, 1987 Session, Senate Document 24, (Richmond, Va.: 1987): 4.

most effective senator in 1987,<sup>129</sup> chaired the Senate Privileges and Elections committee, and served on the Senate Rules committee and the Senate Finance committee (all influential committees). Co-patrons of the study resolution were the chair and two members of the House Committee on the Chesapeake Bay and Its Tributaries. The report of this study was forwarded to the General Assembly in the 1987 Session.

By the 1988 Session, legislators had time to review the study and thus inform their decisions. While all members of the General Assembly may not have time to read all such studies, those in key positions on committees read studies pertaining to their committee areas. Of particular importance in this legislation was the decision of the chairman of the study committee to patron related bills. This provided a linkage between the study and the proposed legislation, making it difficult for legislators to oppose the legislation without refuting the study which their fellow legislators and their staff of experts had developed. The legislation was approved in the session of the General Assembly after the study was released.

#### Legislative Elections

While there were legislative elections for both the House and the Senate in the fall of 1987, there is no indication that the delay in enacting the proposed changes to the Erosion and Sediment Control law was related to the election schedule. The changes were not considered major but were very technical in nature and, as such, required considerable time for drafting and consideration. Such technical changes

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<sup>129</sup> Edds, "Rating Virginia's Legislators," 1.

are not usually an issue in an election unless they have the potential to create a new or increased burden on a group of people. These changes did not propose to do that.

### Political Factors

#### Support of the Governor

There is no indication that this bill was supported or opposed by the governor. This is not unexpected given that the bill was to "fine tune" existing legislation, as opposed to enact a major new initiative. Governor Baliles signed the bill without recommending any changes thus indicating his support of the bill's content.

#### Interest Group Support and Opposition

Several legislators recalled considerable lobbying by the building industry opposing the Erosion and Sediment Law. This was balanced by citizen environmental groups who perceived the law as a means to improve water quality in the Chesapeake Bay watershed. The strength of these lobbying efforts may have shifted between the two years as environmental issues gained increasing public support. The interstate Chesapeake Bay initiative and federal water quality regulations made need for enforcement inevitable, and more localities gained experience in criminal enforcement limitations. Opposition to this specific legislation was limited to efforts to reduce the penalties as the basic concept of regulation of erosion and sediment was already in the law. In this regard, the building industry was successful in that



the penalties as initially proposed were reduced in the final bill which passed.

#### Party Support

In that this bill passed unanimously in the Senate and by a vote of 88 to 2 in the House, there does not appear to have been partisan division on the bill. While both the opposition votes in the House were from Republican members, the remaining Republican members supported the bill. It is not clear whether party leadership supported the bill as there were no co-patrons and the records do not indicate party leadership action in support of the bill.

#### Institutional Factors

##### Committee Support

One indicator of possible success of a bill which was identified by numerous persons in the legislative process was the importance of committee unity as indicated by the vote of the committee. Given the large number of bills considered by the General Assembly in a given session, heavy reliance is placed on the expertise and opinions of members serving on committees in particular issue areas. The committee vote is an indicator to the members of the chamber as to whether the bill enjoyed wide support in the committee or whether it generated considerable disagreement among committee members. The vote of the Senate Committee on Agriculture, Conservation, and Natural Resources on the Erosion and Sediment control bill was closely divided (9 to 5) with one member of the subcommittee which had completed the study on nutrient

enrichment and water quality voting against the bill in committee. This sent the signal to the Senate floor that the committee had not agreed on the bill and the Senate floor vote showed an equally non-committed vote (26 to 14).

This committee vote illustrates one of the criticisms of a strong committee system such as that of the Virginia General Assembly. Several persons interviewed for this study and the literature hold that strong committees make a very few people the ultimate decision makers in the legislative process. Since the Erosion and Sediment Control civil penalties legislation originated in the Senate, the bill could have been killed in the Senate committee to which it was referred. In that the vote in this committee was divided, a shift of three votes could have killed the bill because eight votes constitute a majority in a Senate committee.

By contrast, the House Committee on Conservation and Natural Resources approved the bill by a vote of 14 to 0, sending the message to the House floor that the "experts" on whom they relied regarding conservation matters agreed that the content of the bill was appropriate and acceptable to their constituencies. The House responded with a vote of 88 to 14 for the bill. There did not appear to be strategic voting in use by members of the committees. That is, they did not vote against a bill in committee in anticipation of failure or to leverage more concessions, and then reverse their vote on the floor. Members against the bill in committee voted against the bill on the floor in both chambers.

It is of note that a number of senators who voted against the Senate version of the bill voted for the House amendments to the bill. It is not discernible whether this was because they felt the House bill was truly an improvement or whether this was voting for an environmental bill that was likely to pass with or without their vote, thus making their "yea" vote less critical. Given that floor amendments to the Senate bill were not proposed, it is likely that the senators cast their vote based on the strategy of voting for a popular bill in which their votes were not pivotal.

#### Clout of Key Legislators

The importance of legislative clout was clearly demonstrated in the passage of this bill. While changes were made, the basic intent of the bill was sustained in the approved legislation. This was accomplished with Senator Gartlan's patronage of the bill with no supporting co-patrons. As was mentioned in the above discussion, Senator Gartlan wields considerable clout through his effectiveness level, key committee assignments, and his seniority. Bills proposed by more junior members of the General Assembly often have numerous co-patrons to ensure support for the bill in committee and on the floor. Even with this support, significant changes often occur or the bill is killed in committee.

As in the phosphate ban, the willingness of key legislators to seek compromise was an important factor in passage of this bill. The bill, as originally drafted, lost two key components--the definition of each day being an offense, and the magnitude of the civil penalty.

There is some rationale regarding changes to the daily penalty in that corrections could take several days or weeks to complete and landowners making a good faith effort to make corrections could be penalized by this provision. The lowering of the penalties from \$10,000 to \$2,000 may have been a reflection of concern for individual homeowners (as opposed to developers). Regardless of the rationale, these changes seem to indicate that the building industry lobbied for reduction of penalties and were heard by members of the General Assembly. However, Senator Gartlan and other key legislators voted for the amended bill thus establishing the concept of civil penalties for erosion violations which could be strengthened in future years, if deemed necessary.

#### Number of Co-Patrons

Senator Gartlan introduced this bill without co-patrons with no apparent negative affect on the passage of the bill. This supports the point made by several of the legislators interviewed for this study that senior legislators don't seek co-patrons because they tend to patron a few select bills which they feel will pass with their support alone. With sixteen years in the Senate at the time of this study, Senator Gartlan certainly had considerable seniority. In addition, his clout certainly assisted in passage of the bill and is a factor which helped to balance the lack of co-patrons.

#### Legislative schedules

The time schedule of the General Assembly did play a role in the passage of the bill in so far as it was deferred for one year to allow

further study. While introduction in a long session may not have resulted in passage of the bill given the technical issues involved, its introduction in a short session almost assured that any major concerns on the part of the committee would lead to a carry over. The extremely limited session time of the Virginia General Assembly limits the choices which a committee has in dealing with technical issues requiring further study. Since the erosion and sediment control issue was introduced in an odd numbered year, carry over to the next session was one option. Had the legislation been presented in an even numbered year and raised major questions, the only course left to the committee to keep the issue alive on their agenda was presentation of a resolution to study the issue until the next session.

#### Precedent Setting

While this legislation did not break new ground relative to regulation of land disturbing activities, it did create a precedent for use of civil penalties to recover damages for erosion and sediment control violations. These funds could then be applied to correction of environmental pollution problems in the locality in which the violation occurred. In that this provision was setting new precedents, the legislators were very conservative in setting the level of penalties, defining what constituted a penalty, and in assigning to whom the penalty was to be paid. As proposed, the bill set up to a \$10,000 penalty per day, payable to the locality's treasurer. As enacted, the bill set up to a \$2,000 penalty per violation, payable at the discretion of the court. These changes clearly indicate that the legislators

wished to limit the precedent for localities to seek civil penalties for land development violations in a manner which might be seen primarily as a means to enhance local revenue.

#### Nature of the Legislation

##### Regulatory Legislation

In that the regulation of land disturbing activities had already been established in the erosion and sediment control legislation, this bill did not constitute new regulatory authority. In fact, the use of civil penalties, at moderate levels, are often seen as a positive alternative to criminal penalties because of the legal distinction in the two categories of penalties and because of the relative ease in settling civil penalties, when imposed. The wide margin by which the amended bill passed is an indication that the legislators did not see this as a new form of regulation but rather as a modification of existing regulations.

##### Service Provision

To the extent that this bill was seen as a means to meet the needs of local government officials, it provided a service to a constituency. While not a traditional service in the sense of providing some tangible benefit to a specific group, it was attractive, none-the-less because it met the approval of both the local governments and environmental groups without incurring the fiscal liability of a traditional service. This certainly helped garner more support for the bill among legislators.

In summarizing the erosion and sediment control penalty legislation, the importance of patron clout cannot be underestimated. In addition, the presence of the study probably helped win the large support of the bill in the House. The coming together of the study with citizen interest in environmental issues in 1988 helped make the session one in which the legislators felt the timing was right to support such initiatives, despite some opposition from builders.

### Case Study 3: Ban on Mining and Milling of Uranium

#### Legislative Summary and History

The request for the General Assembly to establish a permanent ban on the mining and milling of uranium in Virginia was requested by the City of Virginia Beach in both its 1987 and 1988 Legislative Proposals. Virginia Beach was interested in this ban because it was pursuing development of a permanent water supply at Lake Gaston in Amelia County. This was downstream from the proposed site for mining of uranium in the state and, as such, presented a potential threat to the water supply for the City. The permanent ban would have strengthened the prohibition established as a moratorium in the 1985 Session. For 1987, this issue was one of 29 presented by the City of Virginia Beach in its 1987 Legislative Proposal and one of 33 presented in 1988.

#### The Legislative Process

Neither in 1987 nor 1988 was legislation introduced to enact the proposed ban on uranium mining and milling. A thorough review of the Final Cumulative Index of Bills, Joint Resolutions, Resolutions, and Documents for both 1987 and 1988 did not uncover any action on this item by any member of the General Assembly.



### Conclusions from the Case Study

The reason for this lack of legislative action had several bases which illustrate the issues surrounding the local government's legislative proposals and the local legislative delegation.

#### Environmental Factors

##### Saliency of the Issue

The apparent reason for no action on the proposed ban was a sense among the legislators from Virginia Beach that this was not an issue of major importance to their constituency. The legislators interviewed felt that there were more critical issues which required their attention in both the 1987 and 1988 sessions. Among these issues were needed increases in funding for education and social programs (health, children's programs, and mental health), several tax and code issues, and some widely supported environmental issues. In fact, 1987 saw passage of the state ban on phosphate detergents, and the introduction of tree protection legislation. Action on both of these issues had been requested as a part of the Virginia Beach Legislative Proposal for that year.

Lack of action after those sessions was due to fading interest in mining uranium among those seeking permission to start such an operation in Virginia. This made the desired ban a "non-issue" by the 1988 session. For this reason, the requested ban was deleted from legislative proposals of Virginia Beach after 1988. Such changes in the legislative environment can impact the passage of legislation in either a positive or negative direction by shifting support, and requires

careful monitoring to ensure that legislative initiatives are not pursued when no longer needed or supported.

The reverse of this situation can also affect the passage of a bill. In other words, a legislative proposal which was an identified need but had little support in the legislative environment can gain support if that environment changes. One example given of this was the regulations regarding use of jet skis. This legislative initiative languished until a series of jet ski accidents provided substantiation of the need. Given the amount of legislation before the General Assembly in a limited period of time, a demonstrated need is often critical for a bill to rise to the top and be acted upon.

#### Studies and Information

One source of information which legislators use in helping to determine what issues to support are the legislative proposals of local governments and other groups (e.g., education association, builders' association). These proposals are most useful when they provide some background regarding the proposed issues, provide some assessment of the advantages and disadvantages of the issue, and list the issues in priority order.

In that the request for the uranium ban was one of many proposals in a lengthy document, its relevance was not grasped by a number of legislators. One person interviewed speculated that the reason Virginia Beach had included the uranium issue in its legislative proposal for two years was due to one council member's environmental extremism, and that it finally was dropped from the proposal after the member was not

re-elected. This is clear evidence of the need for interest groups, including local governments, to provide adequate background information on relevant legislative issues.

Legislators interviewed indicated that short lists of legislative proposals were preferred because the legislators received requests from a variety of sources. They also suggested that the list should be in priority order, although at least one legislator interviewed said local governments would never "bite the bullet and decide what was most important." Several indicated that meetings between local government officials and legislators were useful in sharing information about issues and needs.

#### Legislative Elections

In that the uranium ban was never taken up by the General Assembly, information regarding the impact of legislative elections on the issue is moot.

#### Political Factors

While there is reason to speculate that, given his environmental record, Governor Baliles might have supported a further ban on uranium mining, there is no clear data to confirm this. Similar conclusions might be drawn regarding other political factors. It would be of interest to have discerned the stance of the building industry on a uranium ban, given that the mining of uranium was seen as a threat to the water supply of a rapid growth area of the state and that the same area relies on nuclear energy for electric power. It is probable that

the power industry would have opposed a permanent ban simply because it might set a precedent for other states.

#### Institutional Factors

Again, no action in the General Assembly precludes drawing conclusions on institutional factors on the proposed uranium ban.

#### Nature of the Legislation

While the permanent ban on uranium was not introduced as a legislative item, it is of note that it was building on a moratorium on such mining which had been in place for several years. As such, the issue was regulatory in nature but was not precedent setting and might have had some support among legislators.

In summary, this case demonstrates the importance of a changing legislation environment in the outcome of legislative proposals, and the importance of local government policy actors carefully selecting issues to request in their legislative proposals and supporting them with thorough data so the legislators understand the issues.

Case Study 4: Tree and Preservation Legislation

Legislative Summary and History

The legislative agenda items requesting authority to enact local regulations to control removal of trees during development were requested by Chesapeake, Newport News, Portsmouth, Virginia Beach, and other localities across the state, and were listed as an item of support by Norfolk. This authority was sought through either charter amendments or through general law. The intent of such authority was:<sup>130</sup>

1. To prevent unnecessary loss of trees and green space in developing areas;
2. To preserve heritage or species trees; and
3. To provide reasonable replacement of trees removed in development activities.

The purpose of such authority<sup>131</sup> was to improve aesthetics, to enhance erosion and sediment control, to improve air quality, and to improve energy conservation. The request for authority was included in the legislative proposal of Virginia Beach in 1987, 1988, and 1989. Chesapeake included such a request in its proposal in 1988 and 1989, and Newport News, Norfolk and Portsmouth joined the effort in 1989.

At issue was the restrictions caused by the Dillon's Rule which preclude local governments in Virginia from exercising authority not

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<sup>130</sup> City of Virginia Beach, Virginia, 1987 Legislative Proposals, 4.

<sup>131</sup> City of Chesapeake, Virginia, Legislative Program 1988, November 17, 1987, 3.

specifically granted them by the General Assembly, either through general law or the charter of the government. General law authority was proposed under the section of the Code of Virginia dealing with drainage and soil conservation (Title 21). This change would have allowed any city to enact tree protection regulations within the constraints of the given state law. Alternatively, several cities requested charter changes to allow them to enact tree protection regulations exclusively for their localities.

Legislation was introduced in 1987 by Delegate Rollison (R-Prince William), a member of the House Committee on Conservation and Natural Resources, to amend the "Counties, Cities, and Towns" title of the Code of Virginia to allow certain localities to enact tree protection regulations. This legislation was not enacted. In 1988, four separate bills pertaining to tree protection were introduced. These proposed to amend either the "Counties, Cities, and Towns" title of the Code of Virginia or the "Conservation" section of the Code. These bills were carried over to the 1989 session of the General Assembly. In 1989, legislation amending the "Counties, Cities, and Towns" section of the code was enacted, allowing local governments to pass regulations requiring preservation or replacement of a certain amount of trees during the land development. Also passed was an amendment to the "Conservation" section of the code providing for protection of specimen, heritage, and memorial trees by local governments. The passage of these bills fulfilled the intent of the legislative proposal items of the cities in Hampton Roads which requested tree protection authority.

### The Legislative Process

The legislative action which brought about tree protection legislation occurred over the 1987, 1988, and 1989 sessions of the General Assembly. In addition, amendments to the legislation were passed in 1990. These actions are discussed below.

#### 1987 Action

##### House Bill 1518

Delegate Rollison (R-Prince William), a member of the House Committee on Conservation and Natural Resources, offered a bill to amend the Code of Virginia to allow certain localities to enact local regulations concerning replacement of trees destroyed through the development process.<sup>132</sup> As proposed, the bill would:

- Amend the Code of Virginia Title 15.1--Counties, Cities and Towns;
- Allow urban counties or adjoining counties, and cities with populations greater than 110,000 and less than 120,000 (by 1980 census) to enact tree conservation ordinances;
- Provide for exemptions for federal and state property, emergency work, minor pruning, and harvesting on less than five acres; and
- Provide that violations are misdemeanors, carrying fines of \$10 to \$1,000.

Thirteen members of the House of Delegates and two senators signed as co-patrons of the bill. All of these co-patrons, with the exception of one, were from northern Virginia localities; a not unexpected representation given the narrow language of the bill.

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<sup>132</sup> Commonwealth of Virginia General Assembly, House, A Bill to Amend the Code of Virginia relating to tree conservation ordinances; penalty., 1987 Session, H.B. 1518, (January 27, 1987).

The bill was referred to the House Committee on Conservation and Natural Resources. This referral could also have been made to the Committee on Counties, Cities, and Towns since the bill proposed to amend the section of the Code of that title and subject. The bill was reported, with amendments, to the floor by a vote of 14 to 6. The committee amendments did not change the basic intent of the bill as initially proposed.

The House considered the bill on second reading, including an amendment from Delegate Parrish (R-Manassas) to limit the bill to include only cities with populations of greater than 14,000 and less than 15,000 population. However, the House refused engrossment, effectively killing the bill.

#### House Bill 1255

House Bill 1255 was offered by Delegate Plum (D-Fairfax), a member of the House Committee on Conservation and Natural Resources, and was signed by four co-patrons. It proposed to amend the Code of Virginia to allow certain localities to establish local regulations concerning replacement of trees destroyed through the development process.<sup>133</sup> As proposed, the bill would:

- Amend the Code of Virginia Title 15.1--Counties, Cities and Towns;
- Allow urban counties or adjoining counties, and cities with populations greater than 110,000 and less than 120,000 (by 1980 census) to enact tree conservation ordinances;

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<sup>133</sup> Commonwealth of Virginia General Assembly, House, A Bill to Amend the Code of Virginia by adding a section numbered 15.1-2914 relating to tree conservation ordinances; penalty, 1987 Session, H.B. 1255, (January 23, 1987).



- Provide for exemptions for federal and state property, emergency work, minor pruning, and harvesting on less than five acres; and
- Provide that violations are misdemeanors, carrying fines of \$10 to \$1,000.

The provisions of this bill were identical to those of House bill 1518, except for a slightly different definition of "tree."

The bill was referred to the House Committee on Conservation and Natural Resources. In report of actions from committee at the end of the session, this bill was reported as stricken from the committee docket. While no other record is available as to why this action was taken, it is likely that Delegate Plum, the bill's patron, agreed to the action since the bill was similar to House Bill 1518 under consideration by the same committee at that time (and which included Delegate Plum was a co-patron). Such actions help to limit the workload of committees by removing duplicate bills from consideration.

Delegate Plum must have deferred to Delegate Rollison's bill simply because Delegate Plum served on the House Committee on Conservation and Natural Resources and such an action moved the process of the committee along. There are no other apparent reasons for the Rollison bill to take precedence because Delegate Plum was more senior, is a Democrat (Delegate Rollison is Republican), and Delegate Plum was on the committee to which the bill was referred (Delegate Rollison served on the House Committee on Counties, Cities and Towns). When two identical bills are under consideration, usually the one patroned by the more senior member or by a member of the dominant party (Democrats, in the Virginia General Assembly during the period under study) is the bill which is enacted.

## House Bill 958

Delegate McClanan (D-Virginia Beach), Chairman of the House Committee on Agriculture, and Senator Canada (R-Virginia Beach) offered this bill which proposed to amend the Charter of the City of Virginia Beach to provide additional powers to the City.<sup>134</sup> This bill would:

- Amend the 1962 Acts of Assembly pertaining to the Charter of the City of Virginia Beach;
- Provide for authority to enact local regulations requiring nuisance abatement in a wide variety of matters in the City, including weed and trash removal, junk vehicle removal, snow removal, lot filling, property drainage and similar conditions of concern to public health, safety, and aesthetics;
- Provide authority for local regulations allowing removal of such nuisances by the City as the property owner's expense, after due notice; and
- Provide authority for local regulations regarding tree protection and preservation during development activities and for preservation of heritage trees.

This was necessary because these powers were not explicitly provided to the city and, under Dillon's Rule, were therefore not allowable exercises of the government of Virginia Beach.

The bill was referred to the House Committee on Counties, Cities, and Towns where it was amended with a substitute bill<sup>135</sup> which would

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<sup>134</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend and reenact Section 2.02 of Chapter 147 of the Acts of Assembly of 1962, which provided for a new charter for the City of Virginia Beach, relating to powers of the city, 1987 Session, H.B. 958, (January 14, 1987).

<sup>135</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend and reenact Section 2.02 of Chapter 147 of the Acts of Assembly of 1962, which provided for a new charter for the City of Virginia Beach, relating to powers of the city, 1987 Session, H.B. 958, House Committee on Conservation and Natural Resources Amendment in the Nature of a Substitute (February 6, 1987).

grant broader powers for Virginia Beach than those sought in the original bill by enabling it to exercise all powers currently or later granted to other cities in the state. Language regarding tree protection was maintained as proposed by the patron. The amended bill was reported from the committee by a vote of 16 to 3. The bill was considered on the floor of the House and was amended, at the recommendation of the Committee on Counties, Cities, and Towns, to remove provisions for tree protection and preservation. The amended bill passed the House by a vote of 97 to 0, with three delegates not voting but later stating that they were in favor of the bill.<sup>136</sup>

The Senate referred the bill to the Committee on Local Government. By a vote of 14 to 0, the bill was reported to the floor without amendments. The bill was considered en bloc on the floor of the Senate and passed en bloc by a vote of 40 to 0. After Senate approval, the bill was forwarded to the governor who signed it into law.

While providing enhanced nuisance abatement powers for the City of Virginia Beach, this bill, as passed, did not address the issue of tree protection and preservation. This represented the second consecutive legislative session in which Virginia Beach had sought power to enact a tree protection ordinance and had failed to gain such power.<sup>137</sup> A

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<sup>136</sup> On floor votes, there are often persons not in their seat at the time of vote. Procedures allow for these persons to later state how they would have voted and to have such statements placed in the formal record, although the formal vote recorded is not altered to reflect such statements. While not all "not voting" records have such notes appended, the advantage of such a formal record for the legislature is that it shows their support for a given issue.

<sup>137</sup> Ann Barry, "Tree-Protection proposal axed," Norfolk Virginian-Pilot, 7 February 1987, sec. B, 3.

similar effort to append the authority to enact a local tree protection ordinance to other charter changes in the 1986 Session met with the same fate--the bill passed after amendment to remove the tree protection provisions.<sup>138</sup>

#### 1988 Action

By the 1988 Session, the interest in some legislation for tree protection and conservation had gained a base of support beyond northern Virginia and south Hampton Roads, and was being requested by more local governments as a tool in development review. This was reflected both in the number of bills introduced and in the cross section of patrons who signed on to the various bills.

#### House Bill 151

Delegate Forehand (D-Chesapeake), a member of the House Committee on Conservation and Natural Resources, and Senator Earley (R-Chesapeake), a member of the Senate Committee on Local Government, acting on a request of the Chesapeake City Council, offered a bill to amend the Code of Virginia to allow every town and city to establish local regulations to preserve trees as a part of local authority to lay out streets, sidewalks, and buildings, and to abate nuisances.<sup>139</sup> This bill would:

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<sup>138</sup> Commonwealth of Virginia General Assembly, House, House Bill Summaries 1986 Session, Richmond, Va.: Commonwealth of Virginia Division of Legislative Services (January 1986).

<sup>139</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend and reenact Section 15.1-14 of the Code of Virginia, relating to powers of cities and towns, 1988 Session, H.B. 151, (January 14, 1988).

- Amend the Code of Virginia Title 15.1--Counties, Cities and Towns; and
- Allow for local regulation of unnecessary removal of trees or replacement of trees during the development process.

As proposed, it would not extend similar powers to counties of the state because the section to be amended dealt specifically with cities and towns.

The bill was referred to the House Committee on Counties, Cities, and Towns. This represented a change from the referral of similar bills to Conservation and Natural Resources in the 1987 Session. By a vote of 19 to 0, the committee agreed to carry forward the bill to the 1989 Session. In that this action was reported on February 12 and the session did not end until March 12, it was not the press of time at the end of a session which led to this action. It would rather be attributable to a move on the part of the committee to defer for further study or consideration the proposed bill.

#### House Bill 905

Delegate VanYahres (D-Charlottesville), a member of the House Committee on Counties, Cities, and Towns, proposed this bill to amend the Code of Virginia to allow any county, city or town with an arborist to enact a local tree preservation ordinance.<sup>140</sup> This bill proposed to:

- Amend the Code of Virginia Title 10.1--Conservation Generally;
- Allow cities, counties, or towns with arborists to enact tree conservation ordinances;

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<sup>140</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 10-47.1, relating to tree preservation ordinances, 1988 Session, H.B. 905, (January 26, 1988).

- Allow cities, counties, or towns with arborists to enact heritage and specimen tree preservation ordinances; and
- Provide for exemptions for federal and state property, emergency work, minor pruning, and harvesting of forest crops.

Nine delegates from across the state (northern, southeastern, western, and southside areas) signed as co-patrons of this bill.

This bill was referred to the House Committee on Conservation and Natural Resources which, by a vote of 20 to 0, recommended re-referral to the House Committee on Counties, Cities, and Towns. While re-referral is certainly an appropriate action for a committee which feels a bill is not within its purview, this instance is of interest because it was Conservation and Natural Resources which reported a tree conservation bill to the floor in the 1987 Session. While no one interviewed remembered specific details of the referrals on tree preservation, it is clear that some agreement was reached on which committee would consolidate and study the various bills dealing with tree preservation. By a vote of 19 to 0, the House Committee on Counties, Cities, and Towns voted to carry the bill over to the 1989 Session.

#### House Bill 225

Delegate Forehand proposed this bill to amend the Code of Virginia to allow any county, city or town with an arborist to enact a local ordinance to protect heritage, specimen, or memorial trees.<sup>141</sup> This bill would:

- Amend the Code of Virginia Title 10.1--Conservation Generally;

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<sup>141</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 10-47.1, relating to tree preservation ordinances, 1988 Session, H.B. 225, (January 18, 1988).

- Allow cities, counties, or towns with arborists to enact heritage and specimen tree preservation ordinances; and
- Provide for exemptions for federal and state property, emergency work, minor pruning, and harvesting of forest crops.

It should be noted that Delegate Forehand also patroned House Bill 151 and signed as a co-patron on House Bill 905. He clearly showed a strong interest in the tree conservation and preservation issue.

This bill was referred to the House Committee on Conservation and Natural Resources which, by a vote of 20 to 0, recommended re-referral to the House Committee on Counties, Cities, and Towns. By a vote of 19 to 0, the House Committee on Counties, Cities, and Towns voted to carry the bill over to the 1989 Session.

#### House Bill 713

Delegate Diamonstein (D-Newport News), a very senior delegate and Chairman of the House Committee on General Laws, proposed this bill to amend the Code of Virginia to allow any county, city or town with an arborist to enact a local ordinance to protect heritage, specimen, or memorial trees.<sup>142</sup> This bill would:

- Amend the Code of Virginia Title 10.1--Conservation Generally;
- Allow cities, counties, or towns with arborists to enact heritage and specimen tree preservation ordinances;
- Provide for exemptions for federal and state property, emergency work, minor pruning, and harvesting of forest crops; and

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<sup>142</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 10-47.1, relating to local regulations for preserving and removing heritage, specimen and memorial trees in certain counties, 1988 Session, H.B. 713, (January 26, 1988).

- Provide for compensation by the local government to property owners if the application of the proposed ordinance resulted in taking of private property.

This last provision regarding compensation for taking of private property is not provided for in any of the other proposed tree protection and conservation bills. This is an important provision as it addresses one of the reasons cited as a possible cause for failure of tree protection legislation.<sup>143</sup>

This bill also was referred to the House Committee on Conservation and Natural Resources which, by a vote of 20 to 0, recommended re-referral to the House Committee on Counties, Cities, and Towns. By a vote of 19 to 0, the House Committee on Counties, Cities, and Towns voted to carry the bill over to the 1989 Session.

#### House Bill 127

Delegate McClanan introduced a bill to amend the charter of Virginia Beach section on local powers to allow the city to enact a tree protection/replacement ordinance. This bill would:

- Amend the 1962 Acts of Assembly pertaining to the Charter of the City of Virginia Beach;
- Provide authority for local regulations regarding tree protection and preservation during development activities; and
- Provide for exemption of tree removal by individual homeowners, emergency removal, or work related to forestry and tree farming.

This bill attempted to address several concerns raised by the bill which had been proposed in the 1987 Session which was amended to remove

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<sup>143</sup> Marc Davis and Michael Bass, "City probably will be disappointed," Norfolk Virginian-Pilot, 10 January 1988, sec. The Beacon, 11.



tree protection language. The 1988 bill was predicated on the demonstration of a need for such protection or replacement relative to soil erosion, storm water retention, oxygen replenishment, maintenance of clean air, shade, or other public health, safety, or welfare issues. It also excluded individual homeowners and tree farmers (a group of concern in the rural portion of Virginia Beach). This bill was not co-patroned by any other member of the City of Virginia Beach, despite City Council requests for the bill.<sup>144</sup> The bill was referred to the House Committee on Counties, Cities, and Towns where it was carried over to the 1989 Session by a vote of 19 to 0.

In summary, although five different bills were introduced, the 1988 Session yielded no tree protection/conservation enabling legislation but neither were any bills pertaining to tree protection and conservation killed outright. However, there is some sense among persons interviewed that carrying forward bills is merely a polite way to kill bills.

#### 1989 Session

The 1989 Session saw considerable action on the tree protection and conservation issue both in newly proposed bills and in bills carried forward. The interim between the 1988 and 1989 sessions gave members of the House Committee on Counties, Cities, and Towns time to study the issue and to listen to constituencies and lobbies, both for and against such legislation.

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<sup>144</sup> Davis, "Beach's requests on tax, signs die," 5.

The following brief description is provided of the outcome of bills carried over from the 1988 Session. All bills were carried over from the House Committee on Counties, Cities, and Towns and, therefore, were introduced into that committee at the start of the 1989 Session.

House Bill 151

This bill, to amend the Code of Virginia to allow every town and city to establish local regulations to preserve trees was referred to subcommittee number one of the House Committee on Counties, Cities, and Towns. Four days after assignment to this subcommittee, the full committee voted 20 to 0 to report it as passed by indefinitely.

The use of subcommittees to manage the workload of committees in the House and Senate of the Virginia General Assembly is left to the discretion of the committee chairs, except in the case of the Rules Committee of both houses (where specific subcommittees are provided for in the rules of the House and Senate). The Rules of the House require that subcommittees have a minimum of five committee members per subcommittee. No permanent record of subcommittee actions is maintained nor are subcommittee membership rosters a part of the Journals of the House or Senate. Subcommittees are governed by the rules of their respective house and thus are subject to requirements of meeting publicly.

These committees are usually formed around major subject areas within the committee's purview, but whether a specific bill is referred to the subcommittee is the decision of the committee chair. Several persons interviewed indicated that there are friendly and unfriendly subcommittees and it is possible for a committee chair to send a bill to

an unfriendly committee, if he wishes the bill killed. In this regard, subcommittees have considerable power in that the recommendation of the subcommittee is usually adhered to by the full committee unless full committee testimony brings forward significant new information surrounding a bill or unless strong lobbying occurs before the full committee. In these cases, the bill may be dealt with by the full committee or may be referred back to the subcommittee for further consideration.

Referral to subcommittee may also occur if there are numerous questions raised by the full committee. Given the brief time period between referral of House Bill 151 to subcommittee and the record of full committee action on the bill, it would appear that the recommendation of the subcommittee regarding this bill was accepted and acted upon by the full committee.

#### House Bill 905

This bill to amend the Code of Virginia to allow any county, city or town with an arborist to enact a local tree preservation ordinance, was referred to subcommittee number one of the House Committee on Counties, Cities, and Towns. Four days after assignment to this subcommittee, by a vote of 20 to 0, the full committee voted to pass it by indefinitely.

#### House Bill 225

This bill to amend the Code of Virginia to allow any county, city or town with an arborist to enact a local ordinance to protect heritage,

specimen, or memorial trees, was also passed by indefinitely by a vote of 20 to 0 after four days consideration by subcommittee one.

#### House Bill 713

This bill to amend section 10 of the Code of Virginia to allow any county, city or town with an arborist to enact a local ordinance to protect heritage, specimen, or memorial trees was referred to subcommittee one. It was then reported with an amendment in the nature of a substitute bill to the floor of the House by the full committee by a vote of 19 to 1.

The substitute bill<sup>145</sup> added a provision for protection of "street trees", defined an arborist, provided more specifics as to required compensation in the event the provisions of the tree ordinance constituted taking of private property, and provided for civil penalties for violation of tree ordinances. These changes clarified and strengthened the originally proposed bill. The substitute bill was approved by the full House by a vote of 86 to 13 and was sent to the Senate for action.

In the Senate, the bill was referred to the Committee on Local Government which reported it to the full Senate with amendments by a vote of 14 to 0. The amendments changed the bill so that it did not apply to professional silvaculture activities (as opposed to regulated

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<sup>145</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 10-1127.1, relating to a tree conservation ordinance, 1989 Session, H.B. 713, House Committee on Counties, Cities, and Towns Amendment in the Nature of a Substitute, (January 20, 1989).

forestry activities). This change effectively excluded all activities relating to planting and harvesting of forest crops. The amended version was approved by the Senate by a vote of 39 to 0.

In that this action meant that the version of the bill passed by the House and Senate were different, the amended version was reported to the House which refused to accept the Senate amendments by a vote of 9 to 87. The bill then returned to the Senate which insisted on its amendments and requested a conference committee. Such committees are called when agreement cannot be reached on the House and Senate version of a bill or resolution, or may be called whenever committees of the House and Senate considering similar issues wish to communicate. Membership on conference committees is chosen by the chairs of the committees to whom the bill was referred in the Senate and are appointed by the Speaker in the House. The conference committee members usually consist of members of the committee plus the bill patron. While no number of committee members is mandated in the rules of the House or Senate, three members from each chamber were appointed to conference committees in the years under study. These committees seek to reach a compromise which will "save" the bill and enable it to be accepted by both houses. While the committee members may come to a compromise, it is possible that one or both chambers may not accept the compromise. In such cases, the same conferees can be designated to meet again or a new conference committee can be named.

In the case of House Bill 713, the conference committee recommended rejection of the Senate amendments but also amended the House version of the bill to reflect the silvaculture wording which was

contained in the Senate amendments and expanded it to include horticultural activities. Both the House (64 to 31) and Senate (36 to 4) accepted the conference report. The shift of numerous House members in their vote (from the initial vote of 86 to 13) indicated that the compromise was not acceptable to some members. The original patron of the bill did, however, vote for the final bill either because he agreed with the compromise or felt it was the best that was to be had.

After approval by both chambers, the bill went to the governor who returned it to the House requesting that the title be amended to reflect the inclusion of civil penalties. This change was accepted by both the House and the Senate, and the bill was returned to the governor for signature into law.

#### House Bill 127

House Bill 127 was to amend the charter of Virginia Beach section on local powers to allow the city to enact a tree protection/replacement ordinance. This bill was referred to subcommittee one of the House Committee on Counties, Cities and Towns and was recorded in full committee with no action taken four days later. A record of "no action" in committee has the same effect on a bill as a vote to "pass by indefinitely" but is done so with no formal recorded vote of the committee.

Of the five bills carried over from the 1988 Session, four were effectively killed through no action on the part of the committee that had carried them over, and one bill was amended and enacted. An

additional bill regarding tree protection and conservation was introduced in the 1989 Session. This is discussed below.

#### House Bill 1739

This bill, introduced by Delegate Byrne (D-Fairfax), a member of the House Committee on Counties, Cities, and Towns, would allow localities with populations of at least 75 persons per square mile to enact tree replacement relative to development processes. Specifically, it would:<sup>146</sup>

- Amend the Code of Virginia Title 15.1--Counties, Cities, and Towns;
- Allow localities to adopt ordinances requiring replacement of trees removed during development so that a minimum amount of canopy would be provided within 20 years by land use type (e.g., commercial, suburban, suburban fringe);
- Set guidelines for what would serve as standards for acceptable types of trees; and
- Required allowance for reasonable exemptions when the application of the ordinance would work a hardship on developers.

The primary difference in this bill and those introduced in the 1988 Session is the limitation on the localities which could enact such ordinances (based on population density) and its limitation to tree protection related solely to development. This bill had eleven delegates and one senator as co-patrons. Many of these also had signed as co-patrons on the tree protection bills introduced in the 1988 Session

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<sup>146</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 15.1-14.2 authorizing certain localities to adopt tree replacement ordinances, 1989 Session, H.B. 1739, (January 24, 1989).

(and may have placed their support behind this bill as an alternative which might gain passage).

The bill was referred to the House Committee on Counties, Cities, and Towns which, by a vote of 10 to 6, offered a substitute bill, by way of amendment. This amended version<sup>147</sup> lowered the time by which the canopy levels must be reached from 20 to ten years, lowered the overall canopy requirements, more clearly defined various use areas, provided for exemptions for recreation areas, and provided for penalties for violations of the ordinances. The amendments appeared to be reasonable compromises and improvements which did not change the intent of the bill. The House approved the substitute bill by a vote of 60 to 36.

The bill was then forwarded to the Senate where it was referred to the Committee on Local Government. This committee, by a vote of 12 to 1, reported the bill with amendments. These amendments added a statement regarding wetlands protection, excluded reasonable development of farmland from the ordinances, defined "canopy", and altered one of the percentage coverage requirements. The bill, as amended, passed the Senate by a vote of 31 to 9. Given that the Senate amendment process meant that the House and Senate had passed different versions of the bill, the bill was returned to the House for consideration of the Senate amendments. By a vote of 77 to 18, the House approved the Senate amendments, avoiding the need for a conference committee.

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<sup>147</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend the Code of Virginia by adding a section numbered 15.1-14.2 authorizing certain localities to adopt tree replacement ordinances, 1989 Session, H.B. 1739, House Committee on Counties, Cities, and Towns Amendment in the Nature of a Substitute, (February 3, 1989).



The bill was then forwarded to the governor who returned it with the recommendation that the four residential zones defined be combined into two categories. These recommendations were agreed to by both the House and the Senate, and the bill was returned to the governor for signing into law.

The passage of this bill and House Bill 713 effectively accomplished what the many localities had been seeking since 1986--the authority to preserve or require replacement of trees during the development process and the authority to protect specimen and heritage trees. The success, however, was tempered by lobbying efforts of developers from Northern Virginia in the following legislative session. In 1990, Delegate Byrne, and nine co-patrons, introduced House Bill 990 which proposed changes to the Code of Virginia which would have set the established canopy percentages as maximums, rather than minimums, and would have mandated that planting requirements could not exceed the amount of vegetation in existence prior to development.<sup>148</sup> The House Committee on Counties, Cities and Towns offered a substitute bill<sup>149</sup> which amended the requirement for canopies from a ten year time frame to 20 years, and prohibited local ordinances from exceeding the standards

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<sup>148</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend and reenact section 15.1-14.2 of the Code of Virginia relating to replacement of trees during development process in certain local governments, 1990 Session, H.B. 990, (January 23, 1990).

<sup>149</sup> Commonwealth of Virginia General Assembly, House, A Bill to amend and reenact section 15.1-14.2 of the Code of Virginia, relating to replacement of trees during development process in certain local governments, 1990 Session, H.B. 990, House Committee on Counties, Cities, and Towns Amendment in the Nature of a Substitute, (February 9, 1990).

set forth in the Code. It did provide for exemptions for local ordinances enacted prior to the effective date of the proposed bill. This bill passed the House and the Senate and was approved by the governor.

While some of the Code changes enacted with House Bill 990 were "fine tuning," the change in years to mature canopy, without related changes in percentage coverage reflected a weakening of the requirements. As noted above, the original bill, as proposed in 1989 had a 20 year maturity provision but had lower canopy levels. The bill proposed in 1989 lowered the maturity level to ten years and lowered canopy requirements. The additional provision prohibiting stronger standards locally reduced the effectiveness of the bill but still left the localities well ahead of where they had been on authorization for tree protection prior to 1989.

#### Conclusions from the Case Study

This study shows a protracted yet successful effort to pass legislation which was controversial and had considerable lobbying surrounding it. The issues involved in the process are discussed below.

#### Environmental Factors

##### Saliency of the Issue

The tree protection issue was one that had strong public support, environmentalist support, and was also requested by local governments. This interest was spurred by both the emerging environmental conscience and by the realization that development was removing much of the wooded areas which people found aesthetically pleasing and that there was no

local authority to require replacement of the lost vegetation. The sheer number of bills introduced regarding this issue and the number of legislative sessions during which it was addressed are testament to the perceived saliency of the issue among multiple constituencies. One legislator interviewed recognized this by saying that the tree protection issue "had great public support but had some real problems in the local control issue."

#### Studies and Information

No legislative studies were completed on this issue nor were examples from other states cited. This lack of information may partly explain the considerable time the General Assembly took in deliberating this issue prior to passage.

#### Legislative Elections

The issue of legislative elections was certainly one that bore on tree protection legislation. The tree protection legislation was proposed, in a limited way, in 1986 and 1987. It gained momentum in 1988 and yet was not acted upon until 1989. While certainly the limited interest in the first two years would explain some of the reason for lack of action on the issue, it also is possible that the compromises worked out in 1989 might have been achieved in 1988. The level of citizen support surely weighed on some legislators' minds in 1989 as they considered the possible impact which support of something as tangible as trees protection might have on re-election campaigns in the fall of 1989.

### Political Factors

#### Support of the Governor

While Governor Baliles signed the 1989 bill and Governor Wilder signed the 1990 bill, there is no indication that either was a strong supporter of the tree protection legislation. The fact that, after three years of General Assembly deliberation over proposed tree protection legislation, Governor Baliles still returned the approved bills for technical changes, indicates that it was not an issue in which his staff was closely involved during the deliberative process. When an issue is of importance to the governor, executive branch personnel interact with legislative support staff to provide whatever technical assistance is necessary to gain passage of a bill. Such was not the case with the tree protection issue.

#### Interest Group Support and Opposition

The major interest groups involved in the tree protection legislation were the builder/developer interests, environmental groups, local governments representatives, commercial plant nurseries, and citizens in general. The builders and land developers opposed the enactment of tree protection and replacement legislation and lobbied effectively to delay passage. When public support was such that passage seemed imminent, they were effective in limiting the impact of such legislation on their industry by having language included in the bill which set standards for tree replacement in various types of development areas. In addition, there was a move in the 1990 Session to limit local government authority

to exceed the minimum state standards. While this action was portrayed as a "housekeeping" issue, it appears to have been initiated because of builder/developer complaints regarding the implementation of the state legislation.

The environmental groups, citizens, local government, and nursery groups supported the tree protection and replacement legislation for varying reasons. The predominant reason was growing concern over the quality of the urban/suburban environment in newly developed areas. In many of these areas, land was totally cleared of existing plant material during development and was not replanted or was replanted with much less vegetative material than had been present. This was a concern for local government groups and citizens because of the loss of aesthetic value inherent in the presence of trees and other vegetation, and the loss of trees of special value for their heritage or specimen quality. Environmentalists tied their concerns to the broader issue of soil erosion, oxygen replenishment, and storm water run off control. These concerns helped to associate the tree protection bills with the popular Chesapeake Bay Preservation Act, thus increasing support for the tree protection legislation.

Overall, the variety of interest groups representing interest both for and against the tree protection legislation provided legislators with a broad view of the issue but also made policy decision making fraught with difficult choices. This explains part of the delays in passage of the legislation in that conflicting views often require further research or deliberation before passage.

### Party Support

This does not appear to have been a partisan issue, despite the strong lobbying effort against the bill mounted by the building trade which might have been seen as a reason for Republicans to oppose the bill. In fact, patrons for the various proposed bills included both Democrats and Republicans, as did the list of co-patrons for the bills. While the Democratic leadership of the House and the Senate did not express strong support for the issue, Delegate Diamonstein, considered one of the ten most influential delegates, did support the issue as both a patron of one bill and co-patron of others. None of this led to creation of a Democratic bloc either for or against the bill.

### Voting Strategies

House Bill 1518, considered in the 1987 session, demonstrated a rather unusual floor strategy concerning a vote on a bill--that of refusal to engross a bill. Failure to engross a bill means that it is not printed in final form and placed on the calendar for the third reading and action to pass. Failure to engross effectively kills the bill, unless some procedural maneuvering can forestall such action and have the bill recommitted to committee. This bill had been approved, with amendments, by the committee and had further amendments offered on the floor. One of the floor amendments severely limited the scope of the bill and yet still was not enough to gain its passage. It was obvious that the legislators were concerned about setting a precedent with even the most narrowly defined bill. In that the vote to refuse engrossment was not recorded by individual legislators, the failure to

engross saved the delegates from setting a precedent by voting for the bill or being on record as being against tree protection by voting against the bill.

### Institutional Factors

#### Committee Support

The various tree protection bills were originally referred to the House Committee on Conservation and Natural Resources which referred the bills to the House Committee on Counties, Cities, and Towns because the bills proposed to increase local government authority to allow tree protection rather than alter a state-wide conservation law. It is of interest that the bills were initially referred to Conservation and Natural Resources, as this is an indicator of the flexibility in referral which rests with the Speaker of the House. While the referral in this case may well have been related to the general issue of the bill (which appeared to belong in the jurisdiction of the Committee on Conservation and Natural Resources), it does serve to illustrate the lack of rigid guidelines on bill assignment in the House and the subsequent reliance on the discretion of the Speaker.

Committee support in the House was varied and was reflective of the final outcome of the bills on the House floor. The committee, by a vote of 16 to 3, reported House Bill 958 with language providing tree protection authority deleted. The House and Senate both approved this bill almost unanimously, as recommended by the committee. By contrast, House Bill 1518 was reported from the committee by a split vote of 14 to 6. This bill was refused engrossment by the House, indicating a

perception by House members that, absent strong committee support, the House members were ambivalent as to the bill's value. In similar manner, the House Committee voted unanimously to carry forward several bills on tree protection for further study. This indicates an interest in the bill by the committee members but an unwillingness to act absent further consideration.

The 1989 committee action on House Bill 713 had support of both House and Senate committees by a large majority. This support sent a strong message of agreement to both chambers which passed the bill by wide margins with some amendment which was finally negotiated in a conference committee. By contrast, the House committee reported a split vote (10 to 6) on House Bill 1739 which the House then approved by a much closer vote of 60 to 36. This division in the House was followed by amendments in the Senate and a subsequent refusal on the part of the Senate to yield on its amendments. Ultimately, the House yielded to the Senate version. While the lack of consensus in the House committee may not have caused the division and lack of agreement in the House, such divisiveness can at least serve as an indicator of strong opinions and reservations surrounding an issue and thus alert bill supporters of potential bill failure.

An additional point illustrated by this case is the power of the subcommittees. In the 1987 Session, the three bills referred to House committees required two to three weeks for action to be reported after referral. These included both bills reported with amendment and the one reported simply as stricken from the docket. In 1988 and 1989, bills were referred to a subcommittee. In these cases, the full House



committee reported amendments and substitutes within two weeks and other, shorter actions (passed by indefinitely, no action) in four days. While subcommittee action is not recorded so that a comparison can be made of subcommittee recommendations versus full committee recommendations, the speed with which committee action was reported to the floor implies that the subcommittee recommendations were generally adopted by the full committee. This gives the five or more members of the subcommittee considerable power over bill outcomes in that many bills were recommended to be passed by, virtually killing those bills. The enhanced turn around time evident between the 1987 Session and the 1988 and 1989 Sessions is, however, an indicator of the important role which subcommittees serve in efficient management of committee workloads.

#### Clout of Key Legislators

The clout of the patron was of mixed importance in the handling and outcome of the various proposed tree protection and conservation bills. In the outcome of the bills concerning heritage and specimen tree preservation, the clout of the patron seems to have played a role. Bills introduced in 1988 were all introduced by delegates with limited clout, as measured in effectiveness surveys and seniority.<sup>150</sup> In 1989, the heritage and specimen tree bill which was enacted was patroned by Delegate Diamonstein. Delegate Diamonstein has been a delegate since

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<sup>150</sup> Edds, "Rating Virginia's Legislators," 2.

1968 and, in a 1989 effectiveness survey,<sup>151</sup> was ranked as the seventh most effective member of the House of Delegates. While he did not serve on the House Committee on Counties, Cities, and Towns, Delegate Diamonstein's credibility and standing among his peers spurred negotiations on his proposed bill which led to eventual passage of the bill. Bills with similar content were passed by indefinitely or struck from the agenda, in deference to Diamonstein's bill.

While none of the patrons of the bills on tree conservation or replacement had effectiveness ratings among the top 20 delegates, several of the patrons and co-patrons served on the House Committee on Counties, Cities and Towns, the House Committee on Conservation and Natural Resources, and the Senate Committee on Local Government. Their presence on these committees could help keep the issue of tree protection before the committees, and could enable support to be rallied if the issue was in danger of being killed.

#### Number of Co-Patrons

The number of co-patrons on each of these bills was not large, relative to the total delegates and senators. However, between the first submission of bills dealing with tree protection in 1986 and final passage in 1989, the number of co-patrons steadily increased both in absolute number and in breadth of representation. It is probable that the latter attribute was more important in passage of tree protection legislation because the co-patrons in 1989 were from across the state,

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<sup>151</sup> Margaret Edds. "Survey shows seniority, position determine effectiveness," Norfolk Virginian-Pilot and Ledger-Star, 29 January 1989, sec. C, 3.

they served on several committees of importance to environmental protection enabling legislation, and they represented both political parties, as well as the House and the Senate. This represented a shift from the earlier bills which were patroned, primarily, by delegates from northern Virginia who were members of the Democratic party. The expanded patronage served as an indicator of wider support both across the state and among various constituent groups.

#### Legislative Schedules

The limited sessions of the General Assembly played a role in the bill history of the tree protection legislation. The bills presented in 1987 were effectively killed by lack of action because they could not be carried over to the 1988 session. This limit is placed by the Rules of the House and the Rules of Senate which allow a bill to be carried over only one time, and from even numbered years only. This coincides with the election schedule of members of the General Assembly, which seats new legislatures at the beginning of even numbered years. In this manner, new members are not considering bills which may have been carried over from a session in which they did not participate.

The various bills introduced in 1988 could, however, be carried over to 1989 for further study and deliberation and, in fact, were carried over. This enabled the House Committee on Counties, Cities, and Towns to consider the issue in the interim and draft language which would be acceptable to a majority of the legislators. Action of the issue was critical in 1989 if all the bills were not to be killed again due to a lack of action and inability to carry them over to 1990. This

system requires that an issue of interest which has not gained legislative support be re-introduced at least every two years. While some legislators patron a bill for a number of years (e.g., Delegate O'Brien's (D-Virginia Beach) lottery bill or Senator Marye's (D-Montgomery) bottle bill), others move on to other issues after several years of effort on an issue, thus limiting time spent considering an issue.

#### Precedent Setting

Virginia has been characterized by a number of observers as a conservative state in its governance. This characterization is embodied in the continued use of Dillon's Rule to limit local power, the limited sessions allowable for the General Assembly, and the limited term of the governor. The result of this conservative nature is a reluctance to enact legislation which will provide broad grants of power to a locality, or to enact legislation which could set a precedent for future expansion of local power. This reluctance was critical in the delayed passage of the tree protection bill and in the final grant of authority provided in the bill, as enacted.

The bills which proposed to amend the charters of specific cities and those which would have provided tree protection authority to only northern Virginia jurisdictions failed because legislators said such bills would set precedents for grants of power to all jurisdictions. The final bill struck a compromise on this issue by limiting the authority to localities meeting certain tests of population density. This approach was preferable to separate grants of power to various localities which could provide a varying authority and could lead to

broad grants of power simply due to the sheer volume of options. The one grant to all areas enabled the General Assembly to retain control of the amount of power granted and allowed it to alter such power in one legislative action in 1990.

### Nature of the Legislation

#### Regulatory Legislation

A concern which often arises relative to regulation of any activity is the constitutional protection of property. When regulation limits the use of property, it can be construed as taking of property and, as such, requires compensation for such taking. The members of the General Assembly often are in the role of the protector of individual citizen's rights and property rights are one of the rights which Assembly members guard vigilantly. In the case of tree protection, the compromise reached involved inclusion of specific language requiring the local governments to compensate property owners if enforcement of tree protection ordinances resulted in the taking of property.

The amendments enacted in 1990 to the tree protection bill demonstrate how jealously the General Assembly reserves powers to itself in regulatory matters. The use of specific legislation to outline allowable levels of tree replacement provided a very narrow scope of discretion in which localities could frame ordinances. When some localities enacted ordinances which placed greater requirements on developers, the General Assembly responded by prohibiting more restrictive ordinances. This effectively narrowed the scope of authority to localities to choose between enacting the state standards or not enacting any standards.

Again, the Assembly showed its conservative bent by strictly limiting the scope of intended regulatory authority.

#### Service Provision

Tree protection, while of strong interest to local governments and environmental groups, was not providing a service nor a relief in an existing process (as was the erosion and sediment control penalties). As such, it was a bill which only indirectly provided benefit to a constituency group and did so at a cost to the strong building industry interest group. While public support for the bill ultimately brought legislators to support it, the support was not as easily gained as it might have been if the bill had provided a clear benefit or service to some group.

Perhaps the final conclusion of this case study is that strong lobbies can enter both sides of an issue and cause delays in passage of any legislation surrounding that issue. If both groups of lobbyists persist, a compromise which meets the needs of one group while addressing the concerns of other groups may be the most appropriate and acceptable outcome.

Case Study 5: Stop Work Orders for Wetlands Legislation

Legislative Summary and History

The law governing the protection of subaqueous bottoms, wetlands or the coastal primary sand dunes, is contained in the Code of Virginia Title 62.1--Waters of the State, Ports, and Harbors. This was amended in 1987 by legislation sponsored by Senator Gartlan (D-Fairfax) to provide authority to stop work on all or part of a site which is deemed to be not in compliance with the law. This change provided for stop work orders to be issued by the Commissioner or Board Chairman of a Wetlands Board or Committee after due notice is served and no subsequent remedy is undertaken. The proposed legislation was passed by a unanimous vote of both houses, after amendment.

The City of Virginia Beach, in its 1988 Legislative Proposal,<sup>152</sup> requested a further change to allow localities to adopt their own procedures to monitor and compel compliance with the Wetlands Act and Coastal Primary Dune Act. No member of the Virginia Beach legislative delegation introduced legislation to address this request.

In 1988, Delegate Forehand (D-Chesapeake) introduced House Bill 1037 dealing with uses and activities affecting tidal and non-tidal wetlands, and including a provision for local authority to issue stop work orders in situations where alleged noncompliance was causing or was in imminent danger of causing significant harm to wetlands. This bill

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<sup>152</sup> City of Virginia Beach, Virginia, 1988 Legislative Proposal Revised ed., 24.

(discussed in detail in Case Study 9 below) was not acted upon by the Senate Committee on Agriculture, Conservation, and Natural Resources.

#### The Legislative Process

As specifically regards the Virginia Beach request to amend the Code of Virginia Section 62.1-13.16:1, no legislative action was introduced. Why no member of the delegation introduced such legislation could be due to several reasons as follows:

1. The City of Virginia Beach included 33 items in its 1988 Legislative Proposals. The legislative delegation of seven members would have been pressed to introduce all these proposals plus those requested by individual constituents, interest groups, and items of interest to the legislators themselves.

2. The assembly members from Virginia Beach may have not understood the importance of the request to the City or could have felt it lacked merit.

3. The assembly members could have been aware that Delegate Forehand of Chesapeake was introducing legislation which would address the request for local authority regarding stop-work orders and felt a separate bill amending a different section of the Code of Virginia might be counterproductive.

4. The assembly members may have been aware of a reason why the legislation enacted in the previous General Assembly session should not be altered (e.g., proposed amendment may have been offered and defeated the previous session; patron of earlier legislation was Senator Gartlan (D-Fairfax) who has considerable clout and may have fought amendment of



his bill). Whatever the reason, no specific legislation was introduced and the City of Virginia Beach did not request a similar change in 1989.

#### Conclusions from the Case Study

The major conclusions which can be drawn from this case deal with the composition of the legislative proposals of localities and the criteria used by legislators to determine what bills they will patron. These, and the effect of other factors are discussed below.

#### Environmental Factors

##### Saliency of the Issue

When asked how they selected items to introduce as legislation, the legislators interviewed were quite clear that their job in Richmond is not simply to represent the interests of the local city councils, but also to represent the individuals and groups of citizens who had elected them. One legislator, in commenting on the 1988 Virginia Beach proposal, stated, "There's not much in that package that's realistic."<sup>153</sup>

While many legislators said they divide up the list of local government requests, they also indicated that if no member of the delegation supported a request, it was not introduced. Chief among the criteria by which they judged support of an issue were merit of the issue, constituency interests, and personal interests of the legislators. This last criteria may be a point of concern for Virginia Beach since Delegate McClanan (D-Virginia Beach) appears to be the only legislator with a continuing interest in supporting environmental

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<sup>153</sup> Davis and Bass, "City probably will be disappointed," 11.

issues. This means that, unless McClanan agrees to sponsor such legislative proposals, some items are not introduced from Virginia Beach.<sup>154</sup> Regarding the issue of constituent interest, there is a sense among many policy actors that environmental controls would limit growth in Virginia Beach. This could be interpreted by legislators as a reason not to sponsor environmental legislation issues, despite possible city council wishes.

#### Studies and Information

While no study had been completed to specifically address the efficacy of allowing local authority for protection of wetlands, the legislators needed to look to constituency groups for information on this issue. One source of such information could be the legislative proposals of the local governments. In this case, a fairly good explanation was provided in the Virginia Beach proposal as to the need for the legislative change. It may, however, not have been perceived as a priority due to the length of the proposal and lack of priority listing of the issues.

When asked whether the length of a local legislative proposal affected its consideration, the legislators interviewed gave two general responses. Either they said a shorter proposal was better as it allowed focus on a few issues, or they said a longer proposal was acceptable if the priority of the issues in the proposal was established either

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<sup>154</sup> In the 1991 legislative elections, Delegate McClanan was not re-elected. It will be of interest to observe whether another member of the Virginia Beach delegation is found to patron environmental issues since these issues are of concern to many residents of the City.

through the written document or through meetings with local elected officials and the legislators. While Virginia Beach officials meet with the legislation delegation for Virginia Beach, these meetings focus on explaining the large issues and may, by virtue of that format, send the message to legislators that an issue which is not discussed is not as important as those specifically discussed.

#### Legislative Elections

Since the stop work order legislative item was proposed in an even numbered year, legislative elections were not to occur later that year. Thus, legislative election schedules does not appear to have affected the decision of Virginia Beach legislators concerning the lack of action on this bill. In addition, the requested action was a change in administrative process so would not have had strong constituent interest as an election issue.

#### Political Factors

##### Support of the Governor

While protection of the Chesapeake Bay was a major environmental initiative of Governor Baliles, the provision of environmental protection regulatory authority on a local option basis would not necessarily support a state-wide plan for Bay protection. As a consequence, this proposed bill probably would not have had either support or opposition from the governor.

### Interest Group Support and Opposition

Local authority for environmental protection is generally opposed by industry and business because of the complexity it imposes on the operation of a business when different localities have different standards. This point was demonstrated in 1990 when businesses requested that a fee be imposed on them to help pay for solid waste and recycling initiatives as a way to ward off piece meal solutions to the problem of solid waste which would be onerous.<sup>155</sup> This concern led developers to indicate that they would oppose any efforts to allow local option regulation of wetland and other environmental issues where a state standard and process was in place.

### Party Support

In that the stop work order was never introduced into the legislature, no data are available as to how party support might have played a role in the issue.

### Institutional Factors

#### Committee Support

Again, absent introduction of a bill, the potential for committee support on this issue is only speculative. While the requested change could have been viewed as fine tuning, the precedent of allowing local option regulation, developer opposition, and the concerns over due

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<sup>155</sup> Thomas Boyer, "Business coalition backs bill creating tax to fund waste disposal," Norfolk Virginian-Pilot, 12 February 1990, sec. D, 1.

process probably would have led to considerable discussion of this issue had it been introduced.

#### Clout of Key Legislators

There did not appear to be support from key legislators to introduce this bill in 1988 or subsequent years. Had more localities requested such legislation, it might have found a champion among the key legislators who patron many of the environmental issues (e.g., Senator Gartlan). One person interviewed noted that Delegate Murphy (D-Westmoreland) and Senator Gartlan, both influential legislators relative to environmental issues, had steered the earlier provisions for stop work orders through the General Assembly. Absent their support, further changes might have been difficult to gain because other members would look to them as the experts on the issue when deciding how to vote on changes to the law.

#### Number of Co-Patrons

No member of the Virginia Beach delegation introduced a bill to meet the need for local authority relative to stop work orders, nor did legislators from other cities patron such a bill. Given this low interest level, it is unlikely that a large number of co-patrons would have been found for this bill.

### Legislative Schedules

To the extent that the limited legislative session limits how many bills a local legislation delegation introduces, legislative schedule could be said to have negatively impacted this issue. Given an unlimited schedule, a legislator might have been found to introduced the item, merely to satisfy local government officials.

### Precedent Setting

The General Assembly tends to limit local authority to regulate an activity if such regulation would take precedence over state standards. This is done both in response to developer and business concerns over "patch work" regulations, and in concern for local regulations exceeding state standards and thereby possibly violating constitutional protection to be afforded property owners. Given the example in the tree protection issue, where the General Assembly amended the legislation to prohibit local authority in excess of established state standards, it is unlikely that the Assembly would have provided more flexibility on the stop work order issue. To do so would have furthered the precedent for local option authority in state environmental regulations.

### Nature of the Legislation

#### Regulatory Legislation

The regulatory nature of this issue was clearly a concern, particularly as it allowed local option regulation. One person interviewed indicated that one real concern was that of lack of due process in some of the local regulatory actions. This appeared to be a problem

in Virginia Beach where staff of the city were allowed to issue stop work orders, absent the signature of a Wetlands Board member. This removed from the property owner the right to appeal to a person appointed by an elected official. While there was the potential for damage to the environment to increase while Board members were contacted, there was a requirement to legally protect the property owner's right to use his land. Prohibiting such use without due process is always a concern with regulatory legislation and the legislature loses control of this issue when regulatory authority is granted the local governments.

#### Service Provision

This issue did not deal with provision of service, but rather potential denial of use of property among constituents. While provision of the stop work order local option authority might be construed as a service to local governments, this would probably not have been a compelling argument since few local governments appeared interested in it and alternative enforcement (by state standards) did exist for local governments.

In conclusion, this case demonstrates that some issues in a legislative proposal may not be introduced and also sets forth some conditions which support the legislators' views as to why items are not introduced. It also identifies concerns which legislators raise about certain issues and which need to be addressed by local governments in seeking legislation.

Case Study 6: Funding for Back Bay Restoration

Legislative Summary and History

The legislative proposals from the City of Virginia Beach for both 1988 and 1989 included a request for \$250,000 in funding to construct water control structures for drainage ditches to protect the Back Bay and North Landing watersheds. This request did not require a specific bill to be introduced but, rather was considered as an amendment to the budget bill. Funding was granted, as requested, in the 1989 Session of the General Assembly.

The Legislative Process

The budget of Virginia is a biennial budget which is prepared by the governor and his staff and forwarded to the General Assembly where it is placed before both houses by a separate House and Senate bill. These bills are referred, respectively to the House Committee on Appropriations and the Senate Committee on Finance. After reporting by each committee and passage by the individual houses, a conference committee meets and resolves differences in the two bills. In the even numbered years, the budget for a biennium is approved. In the odd numbered years, amendments to the biennium budget are considered. As a result of this arrangement, large appropriations or major new initiatives are considered in the even numbered years and continuing aid requests or small program initiatives are proposed in the odd numbered years.



1988 Action

In 1988, the assembly members and support staff for the City of Virginia Beach succeeded in having an amendment added to the House budget bill to provide funds for the Back Bay water control structures. This amendment was not contested and passed the House floor but was not included in the Senate amendments. After conference committee, the requested appropriation was not included in the bill which was ultimately approved by both houses and signed by the governor.

1989 Action

In 1989, the assembly members and support staff for the City of Virginia Beach succeeded in obtaining the requested funds in both the House and Senate amendments to the budget bill. With passage of these bills by both houses and signature by the governor, one-time funding for water control structures in the Back Bay and North Landing watersheds was provided. The success of this request in the odd year of the biennium can probably be attributed to the fact that, while a new program, it did not represent an on-going cost. Its passage was also assisted by assurances of matching funds from other sources and from participant land owners, and by the fact that it was presented as a water quality issue at a time when the Chesapeake Bay initiative had increased public awareness of water quality issues.

### Conclusions from the Case Study

The major conclusions from this study are less obvious than in those studies which dealt with issues having specific legislation proposed relative to the issue.

#### Environmental Factors

##### Saliency of the Issue

The upswing in environmental awareness certainly assisted in obtaining the desired funding in this case. While this funding was to assist farmers in water control and drainage structures and was listed as an agricultural concern in the legislative proposal of Virginia Beach, it was presented as a water quality issue as opposed to soil conservation/agriculture issue. Such a strategy is a matter of understanding which issues are of particular interest at a given time in the legislative history cycle and incorporating those interests in proposals, where appropriate.

##### Studies and Information

At the time of this requested funding, the City of Virginia Beach had completed a study of the Back Bay watershed which had identified critical issues to management of the watershed and possible preventive measures which could be undertaken. The management of soil erosion in the agriculture area was certainly an area which was important. While this study was not provided to the General Assembly, it formed the basis for the requested state funding assistance and would have been available to key legislators to provide further documentation of the need.

### Legislative Elections

There was not a legislative election in 1988, so the election schedule does not appear to have been a factor in deferral of funding for one year. Given the relatively small amount of funds involved in the request and the limited constituency which would benefit directly from the funding, it is unlikely that the 1989 elections factored into the approval of the funds in the 1989 session.

### Political Factors

#### Support of the Governor

An item of this small size in the overall state budget would not be of concern to the governor, unless it was to fund something highly controversial. The erosion control issue was not controversial and so the governor was probably not aware of the item.

If the requested funding has some question or controversy surrounding it, it is very important to monitor the budget bill after it is approved in final version by both houses but prior to the governor's signature. This caution is needed because the Constitution of Virginia provides the governor with the power to "veto any particular item or items of an appropriation bill."<sup>156</sup> Passage of an item by both houses could still face failure through the governor's veto. If that potential exists, members of the legislative delegation can attempt to provide more information to save an issue if it is of sufficient import to request a meeting with the governor.

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<sup>156</sup> The Constitution of Virginia, Article V, sec. 6.

#### Interest Group Support and Opposition

This item was supported by environmental groups, the Virginia Beach local government, and the agriculture interests in Virginia Beach. While the funding was specifically for Virginia Beach, the manner in which the funds were provided (e.g., amounts, required matches, purpose) would be of interest to similar constituencies in other localities and thus may well have been supported by legislators from other localities for that reason.

#### Party Support

In that this was a minor issue for funding on a non-recurring basis, there is no specific record of action related to it which would indicate any partisan support for or against it.

#### Voting Strategies

While not specifically a voting strategy, the need to enter budget amendments in both the House and Senate to ensure passage is a strategy which should not be overlooked by local government officials seeking state funding. It would appear that one of the ways in which the budget reconciliation is accomplished between the House and Senate versions is to remove items which both have not considered. Given the magnitude of their task in considering and balancing a biennium budget in less than ninety days, many more strategies are probably used as well and should be considered by requesting parties.

Institutional Factors

## Committee Support

The fact that this item was not approved in 1988 (when the budget was formulated) but was approved as a budget amendment in 1989 suggests that other factors were at play in budget deliberations. A possible explanation is that of balance. Of the hundreds of amendments to the budget which would provide assistance to local governments and programs, the House and Senate amendments to the Department of Conservation and Natural Resources each contained one item for Virginia Beach. The Senate version included assistance for the Maritime Historical Museum; the House version included the requested Back Bay water quality issue. The conference version included the funding for the museum but had deleted the water quality funding. In reviewing the conference version, it appeared that the amendments included "something for everyone" across the state. This sort of spreading small amounts of funding to large numbers of jurisdictions is popular with elected officials as every constituency gains something.

## Clout of Key Legislators

In that both the House and the Senate consider budget bills at the same time and then resolve differences in conference, the strategy for legislative action needs to vary from other bills which are considered in one chamber at a time. This case demonstrates the differences which can occur in the two versions of the bill, even on small items such as the two assistance for Virginia Beach amendments included in the Conservation and Historic Resources portion of the budget. To limit the

potential for requested funds to be removed from consideration in the conference committee, a key legislator should be identified in both the House and the Senate to guide the amendments through committee so the funding becomes a non-contested item prior to the meeting of the conference committee. This is more difficult for localities which do not have a member on the Senate Committee on Finance and the House Committee on Appropriations. One legislator interviewed said, however, that there is a representative from each region on these committees and that local government representatives should work through those legislators on budget matters. The person went on to say that Virginia Beach has a tendency to want to "go it alone" and not use the regional approach on budget matters. It is clear that the key budget legislators could help or hinder a local assistance issue and should, at least, be apprised of requests to be included from local areas so they are not surprised during budget deliberations.

#### Number of Co-Patrons

In that local appropriation requests are handled as budget amendments rather than as specific bills, co-patronage does not play a key role in these matters.

#### Legislative Schedules

The press of the legislative schedule certainly compresses the budget deliberation process so that items in question or not agreed upon by both chambers may be removed simply because there is not time to reconsider the issues. While some movement has occurred in the 1991

session of the General Assembly to provide a break in mid-session to allow consideration of the budget, this would require a constitutional amendment and does not appear to be a strong issue at this time. As resources tighten and budget deliberations become more difficult, such a break might gain more support. Until then, the legislators can deal with the demands of the budget and the session limit only by requesting pre-session briefings so they know what the major issues and constraints will be in the budget.

For local governments, the main avenue for budget amendment is either appeal to a member of the Assembly budget committees or working through the appropriate state agency to have such agency submit the needed funding as a part of their agency request. For one time aid issues such as the Back Bay initiative or for aid which does not fall under the purview of a state agency (e.g., grants for museums) the amendment route is the only viable alternative.

#### Precedent Setting

While it could be argued that this item set a precedent for other localities to request similar assistance, the one time nature of the grants and the required matches would limit the impact of such a precedent. The state continues to make grants to localities for completion of environmental projects which have specific tasks or outcomes and, therefore are of a limited term. In this manner, the state sets a precedent for assisting localities in meeting environmental needs but only for limited term projects and only with local matches in commitment. As such, this is a manageable precedent.

### Nature of the Legislation

#### Regulatory Legislation

This was not a regulatory issue in that farmers were to voluntarily participate in the program. As such, the chances for approval were increased.

#### Service Provision

This clearly provided a service to a group of constituents and also placed legislators on record as having "put their money where their mouth is" on environmental issues. As such, it was a winning situation for legislators supporting the funding and did not create a demand for future service since the grants were for one time construction of control devices.

In conclusion, this case demonstrates the importance of assessing the interest cycle in determining how to present an issue in the most effective manner. It also demonstrates the desirability of moderating requests in a given year or at least being willing to negotiate over lesser amounts of funding so that everyone "wins." Lastly, it shows the importance of ensuring that a desired amendment to the appropriations bill is placed before both the House Committee On Appropriations and the Senate Committee on Finance for consideration.



Case Study 7: Transferrable Development Rights Legislation

Legislative Summary and History

Transferrable Development Rights are a growth management strategy which allows a locality to set up a mechanism whereby the development rights of one property are transferred to another property thus prohibiting future development in the "sending" property while allowing development at an increased density in the "receiving" property.

A request for such authority was made by the County of Loudoun in 1986. This request, presented in both House<sup>157</sup> and Senate bills, was to amend the Code of Virginia chapter on Counties, Cities, and Towns to allow localities of certain sizes to enact transferrable development mechanisms as a part of their zoning ordinances, and sought General Assembly approval of the transferrable development rights program enacted by Loudoun County in January, 1986. This legislation was continued to 1987 where the House bill had no action taken on it by the House Committee for Courts of Justice and the Senate bill was passed by indefinitely in the Senate Committee on Local Government. The authority to enact such enabling ordinances was requested by the City of Virginia Beach as a part of its 1989 Legislative Proposals. As proposed, the City sought an amendment to the City Charter to enable the city, under

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<sup>157</sup> Commonwealth of Virginia General Assembly. House. A Bill to amend and reenact the Code of Virginia relating to transfer of development rights in certain counties; approval of ordinance adopted pursuant to section, 1986 Session. H.B. 588, (January 21, 1986).

its zoning powers, to implement a transferrable development rights mechanism.

#### The Legislative Process

The City of Virginia Beach sought authority to establish transferrable development right authority in both 1989 and 1990. In 1990, the City was joined by other urban, suburban, and urbanizing areas of the state.

#### 1989 Action

The 1989 proposal was directed solely at Virginia Beach through charter amendments. House Bill 1187,<sup>158</sup> drafted to meet this need, was introduced by Delegate Croshaw (D-Virginia Beach), a member of the House Committee on Conservation and Natural Resources, but had no co-patrons. The bill was referred to the House Committee on Counties, Cities, and Towns where it was passed by indefinitely by a vote of 19 to 1. This was not a surprise to Virginia Beach in that Delegate Croshaw said he felt "our chances are less than 50-50"<sup>159</sup> and to Delegate Tata (R-Virginia Beach), who sat on the House Committee on Counties, Cities, and Towns and opposed the proposal. This bill was not carried forward and

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<sup>158</sup> Commonwealth of Virginia General Assembly. House. A Bill to amend and reenact section 2.02, as amended, of Chapter 147 of the Acts of Assembly of 1962, which provided a charter for the City of Virginia Beach, relating to powers of the city, 1989 Session. H.B. 1187, (January 11, 1989).

<sup>159</sup> Bonnie Winston and Marc Davis, "New tool to control Beach development faces battle," Norfolk Virginian-Pilot and Ledger-Star, 28 January 1989, sec. A, 2.

no other bills were proposed in 1989 which addressed transferrable development rights.

#### 1990 Action

While the 1990 Session is not a formal part of this research, the action which occurred on the transferrable development rights issue subsequent to the 1989 Session is of note. The Virginia Beach City Council included the request for transferrable development rights in its 1990 Legislative Proposals. While most of the Virginia Beach legislative delegation continued to oppose the concept, it was expected that Delegate Croshaw would once again sponsor such a bill. One month before the 1990 Session, however, Delegate Croshaw<sup>160</sup> refused to sponsor such a bill saying "I have no intentions of supporting anything. This is too little too late."<sup>161</sup> He cited as his reasons the inability of the city to build consensus in the community for the concept and the lack of a provision to allow reversion of development rights to undeveloped land after some period of time. As a consequence, the City was left with the only option being to support a bill sponsored by a legislator from another area of the state.

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<sup>160</sup> Alex Marshall, "Beach council to take up TDR plan today," Norfolk Virginian-Pilot, 18 December 1989, sec. D, 3.

<sup>161</sup> Alex Marshall, "Beach to request growth-control tool," Norfolk Virginian-Pilot, 19 December 1989, sec. D, 1.

A bill to request local authority to establish transferrable development rights<sup>162</sup> under the Counties, Cities, and Towns title of the Code of Virginia was introduced in 1990 by Delegate Marshall (D-Arlington), chairman of the House Committee on Counties, Cities, and Towns. This bill was referred to the House Committee on Counties, Cities, and Towns where it was continued to 1991. A similar bill was introduced in the Senate by Senator Waddell (D-Loudoun), a member of the Senate Committee on Local Government and Committee on Agriculture, Conservation and Natural Resources. A 1990 House Joint Resolution to establish a subcommittee to study the transferrable development rights issue was passed by indefinitely in the House Committee on Rules. Since that time, a study on the issue has been completed but little further action has occurred and, with changes in local city councils, the interest in the issue is not as strong in the Hampton Roads area.

#### Conclusions from the Case Study

There are several process issues which this case study illustrates. These are discussed below.

#### Environmental Factors

##### Saliency of the Issue

This issue appeared to be of importance in its intent to help control development in rural areas of localities across the state. It did not, however, enjoy the support of a broad based constituency

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<sup>162</sup> Commonwealth of Virginia General Assembly. House. A Bill to amend the Code of Virginia by adding a section numbered 15.1-491.03, relating to transferrable development rights, 1990 Session. H.B. 164, (January 12, 1990).

because of the unresolved questions raised by persons owning the rural property. It also suffered from the vision of higher density in the developed areas of cities; a concept which many suburban voters rejected for their neighborhoods. Changes in the City Council in Virginia Beach ended any real interest in pursuing this issue in recent years. A new comprehensive development plan for the City was drawn without consideration of this option, making further interest in it unlikely for the foreseeable future.

The issue of why some items in a legislative proposal are not introduced as legislation was addressed during the interview component of this research. When questioned as to how they chose items to sponsor, eight of 15 respondents interviewed for this research described the process, rather than the philosophy, by talking about how the legislative delegation divided up the legislative proposal by interest areas or by seniority. Since some issues contained in legislative proposals are never introduced, other factors beyond that of dividing up of the list must be at work. Little consistency was provided on this facet of the issue. However, of 13 other factors mentioned, two dealt with doing what is best for the constituency and three dealt with constituency support of local government initiatives. These were clearly lacking in the transferrable development right issue for Virginia Beach.

## Studies and Information

Virginia Beach had undertaken extensive study of the transferrable development issue and, in fact, spent \$400,000 on consultant fees to study the issue. Ironically, that study was used to support the establishment of a transferrable development right authority in Kentucky; an outcome which one Virginia Beach council member characterized as "A real kick in the head."<sup>163</sup> After the 1989 failure of the legislation, the City of Virginia Beach spent additional resources answering further questions about the concept. In fact, a member of the City Council said "If the General Assembly says no, it's not going to be because we have not done our homework, All the answers are there...there is nothing left to study."<sup>164</sup>

Yet the General Assembly did authorize further study of the issue. This was apparently based on many unanswered questions as to how the program would be implemented and how property rights would be protected. The availability of a model in Maryland for a transfer of rights program was not enough to overcome the skepticism of many legislators. To date, no further action has occurred on the transferrable development right issue. This leaves one to speculate that perhaps, the study was a way to kill the issue. This prospect was raised by several persons interviewed who said an issue can be "studied to death" or that a study helps a bill gain passage only if it "lowers uncertainty or lack of comfort"

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<sup>163</sup> Alex Marshall, "Transfer: Kentucky uses Beach development bill," Norfolk Virginian-Pilot, 12 September 1990, sec. D, 1.

<sup>164</sup> Alex Marshall, "Beach to try again for growth transfer rights," Norfolk Virginian-Pilot, 4 December 1989, sec. D, 1.

on the issue. Given the complexity of this issue, it is possible that a study could not accomplish that task.

#### Legislative Elections

Legislative elections were not an issue mentioned as affecting the delays on the transferrable development rights legislation. There was little legislator support for it and no outcry from the constituency demanding action on the issue. As such, it was not an issue legislators felt pressured about relative to re-election bids.

#### Political Factors

##### Support of the Governor

There was no indication as to whether Governor Baliles or Governor Wilder supported this issue. It was very technical in nature and probably would have gone through many amendments before reaching the governor's desk. Given the controversy surrounding the issue and his interest in higher office it is unlikely that Wilder would support it.

##### Interest Group Support and Opposition

The builders and developers<sup>165</sup> were opposed to this legislation and mounted a continual lobbying effort against the proposed transferable development rights authority. They were joined by rural landowners who were afraid their property rights would be permanently taken without just compensation. Supporting the legislation were

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<sup>165</sup> Marshall, "Beach to try again," 4.

environmentalists and preservationists who saw it as a way to preserve thousands of acres of rural land, and city officials who saw it as a way to avoid the costs of extending city services to new areas of development. The lack of support of the rural community was often cited as the reason many legislators would not support the legislation. Delegate Croshaw,<sup>166</sup> in comments regarding his refusal to sponsor the bill in 1990 noted the inability of city policy makers to gain consensus in the rural community.

#### Party Support

Given the limited support of the bill, there was little basis for analyzing it along party lines. While sponsors of the various bills were Democrats, so also were some of the strongest critics of the measure.

#### Institutional Factors

##### Committee Support

Committee support was lacking on this issue. Senator Stallings (D-Virginia Beach), a member of the sub-committee reviewing the bill was quoted as saying "The more I hear about it, the less it makes any sense at all, And the more I learn, the less I think of it."<sup>167</sup> Senator Waddell, a patron of the 1990 bill, said "I may or may not have had the votes to get it out of the Senate Local Government Committee. It would

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<sup>166</sup> Marshall, "Beach to request growth-control tool," 1.

<sup>167</sup> Marshall, "Transfer: Kentucky uses bill," 1.



be an exercise in futility, I think, to push for it."<sup>168</sup> These sort of assessments at the committee level would surely mean it had no chance on the floor of either chamber.

#### Clout of Key Legislators

In this case, clout of the patron could not overcome other considerations working against the proposed legislation. While Delegate Croshaw is not ranked as having a lot of clout, Delegate Marshall was ranked among the top 20 most effective delegates<sup>169</sup> and has been in the House of Delegates for over 20 years. Delegate Marshall was also the chair of the House Committee on Counties, Cities, and Towns which was the committee to which the bill was referred. Despite the delegate's considerable stature and influence, she chose to withdraw the bill from consideration and submit a request for study resolution instead. She cited lack of legislator familiarity with the issue and builder opposition<sup>170</sup> as reasons she felt it was futile to pursue the bill. After this action, Senator Waddell withdrew his bill as well.

A final note is that one person interviewed sensed opposition to the idea of transferrable development rights by several key legislators saying "A few people need to retire before that issue goes anywhere." While this certainly may have merit, the number of unresolved issues surrounding the very complex property issues which transferrable

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<sup>168</sup> Alex Marshall and Thomas Boyer, "Bill pulled, dashing Beach plan for rural areas," Norfolk Virginian-Pilot, 31 January 1990, sec. A, 6.

<sup>169</sup> Edds, "Survey effectiveness," 3.

<sup>170</sup> Marshall and Boyer, "Bill pulled," 6.

development rights entail gave conservative General Assembly members adequate reason to decline to support the proposed legislation without key legislators playing a role.

#### Number of Co-Patrons

Neither of the bills introduced on transferrable development rights had a large number of co-patrons thus making the analysis of affect of a large number of co-patrons moot. Of interest, however, are two observations made regarding the use of co-patronage in bill support.

First among these is the limited support from the Virginia Beach delegation and then the reversal of position which Delegate Croshaw took regarding patronage of the bill. Such limited support sent the wrong message to other legislators in the General Assembly and probably lost whatever support had existed for the bill outside the urbanized areas which would benefit from the legislation. The message sent was that the delegation from a city requesting the bill was not supporting it, and they must know something of the issue. This is supported by the literature on cue taking among legislators, where members who are not certain how to vote on an issue look to persons with knowledge and expertise on the issue under consideration. Since Virginia Beach had requested the transferrable development authority in 1989 and none of its delegation would support the issue in 1990, the issue had little chance of success.

A second related issue is that of special interest legislation and the importance of co-patronage in that regard. After the proposed bills were withdrawn in 1990, there was some discussion among northern Virginia localities of proposing legislation again in 1991. Senator

Waddell,<sup>171</sup> noting the lack of local support which doomed the bill in 1990, said that, absent more support from the Virginia Beach delegation, a bill applicable only to northern Virginia might be enacted. Such a strategy might engender more support from the Virginia Beach delegation or, absent support, at least would minimize the impact of their lack of support.

#### Legislative Schedules

The legislative schedule does not appear to have been an issue in the failure of this issue. While limited sessions certainly limited the amount of time which the committees had to consider this issue, there was considerable pre-session communication on the issue among Virginia Beach officials and legislators. None of this served to improve the chances of the issue passing, indicating that more time during the session would not have made a difference in the outcome.

#### Precedent Setting

Virginia, as noted in case studies above, has been characterized as a conservative state in its governance. This conservative nature was at work in the outcome of the transferrable development rights legislation, both as a concern for control of local authority and as a concern for protection of property rights. While there had been considerable discussion and study of the issue at the local level, there appeared to be significant, unanswered policy questions as to the permanence of the transfer of rights, the method by which the right for more dense

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<sup>171</sup> Marshall and Boyer, "Bill pulled," 6.

development would be implemented, and why this tool was needed in lieu of local zoning authority. In commenting on this problem, Delegate Croshaw indicated that the local government lacked a proven capability to plan and characterized the General Assembly as able to be "more deliberate, to step back from provincial views."<sup>172</sup>

### Nature of the Legislation

#### Regulatory Legislation

The legislation was clearly regulatory in nature and constituted a concern relative to protection of property rights of those persons living in the less developed areas who would be transferring their development rights. The lack of a limit on the time during which development rights were sold meant that the right to develop was lost in perpetuity; that future generations had their land rights tied. These were prospects which legislators felt could be unconstitutional and could constitute an unjust taking of property. While the experiences in other states were shared with policy actors, there did not appear to be enough state-wide support to overcome the legislators' concerns regarding property rights.

#### Service Provision

This legislation would have provided an additional growth management tool for local governments and, as such, could be viewed as providing a service to them. It also could have been seen as a service to rural landowners, allowing them to enjoy the quality of their life

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<sup>172</sup> Marshall, "Beach Council to take up TDR " 3.

while reaping the benefits which accrue to the sale of land for development. However, the rural landowners remained ambivalent on this point and the argument of transferrable development rights as a service to constituents was lost.

If any one lesson was to be drawn from this study it is that legislators will act in a manner which they perceive as meeting constituent needs even when such action is contrary to the wishes of local policy makers. In this case local policy makers failed to answer critical questions raised by the legislators and were unable to build constituency support for the concept. If there is a clear lack of support among the local legislative delegation, the local policy makers might be better served reconsidering the proposed legislation or seeking another avenue of legislative enactment, such as regional or state associations or informal local government networks.

Case Study 8: Amendments to the Chesapeake Bay Act

Legislative Summary and History

After completion of a study of land use issues relative to protection of the Chesapeake Bay,<sup>173</sup> the Chesapeake Bay Preservation Act was enacted in 1988 with the support of the governor, environmental lobbyists, and the overwhelming support of both the House and the Senate.<sup>174</sup> The act established a state board (The Chesapeake Bay Local Assistance Board), to set guidelines for development in areas of the state where storm water run-off or tributaries entered the Chesapeake Bay. While localities were required to follow state guidelines, the bill allowed such adherence to be accomplished with modifications to local ordinance. Critics of the bill felt it was unwarranted state intervention in local land use management<sup>175</sup> and that any such initiative should be accompanied by state financial assistance to localities for program implementation.

Based on these continuing concerns, several localities which would be heavily impacted by implementation of the act requested changes to the Act in subsequent legislative sessions. The City of Hampton, as a

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<sup>173</sup> This study, Land Use Initiatives for Tidewater Virginia: The Next Step in Protecting the Bay, was requested by the 1986 Session of the General Assembly and was completed in November 1987. It was placed before the General Assembly for the 1988 Session as Senate Document 6.

<sup>174</sup> Bill Byrd, "Bay land-use bill gains in House," Norfolk Virginian-Pilot, 16 February 1988, sec A, 8.

<sup>175</sup> Bill Byrd, "Senate OKs panel on Bay development," Norfolk Virginian-Pilot, 3 March 1988, sec. A, 12.

part of its 1989 Legislative Proposals, requested changes to the implementation schedule of the Act for localities, and to the public comment period for the regulations. Other localities proposed legislation which would have exempted from the Chesapeake Bay Preservation Act land and bodies of water which lay only partially within the definition of "Tidewater" Virginia. Also proposed was an amendment which would have required the state to pay all costs incurred by localities in complying with the Chesapeake Bay Preservation Act.

#### The Legislative Process

Proposed amendments to the Chesapeake Bay Act were put forth in 1989 and 1990 as legislative initiatives. These initiatives are discussed below.

#### 1989 Action

For the 1989 Session, the City of Hampton did not specifically introduce a bill to address the proposed schedule and hearing period. However, the concern over time for implementation was addressed through an administrative change so that localities had until September 20, 1990 to approve a local ordinance which would address the requirements of the Chesapeake Bay Preservation Act.<sup>176</sup> After review by the state, additional time was provided to comply with provisions of the Act, based on recommendations of the state board.

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<sup>176</sup> Kerry DeRochi, "Lock of the Bay: New Chesapeake Bay Preservation Act likely to restrict development on waterfront property," Norfolk Virginian-Pilot, 2 September 1990, sec. The Clipper, 16.

The efforts to weaken the Act occurred when localities began to enact local ordinances and waterfront property owners, some local government officials, and developers began to realize the impact the Act would have on development and property use (e.g., additions to homes, construction of decks). Two bills introduced in the 1990 Session to exempt lands partially in the Tidewater area, and to require state payment for all local costs incurred in implementation of the Act, were passed by indefinitely by the House Committee on the Chesapeake Bay and its Tributaries and the House Committee on Agriculture, Conservation, and Natural Resources, respectively. The financing requirement was characterized by one person interviewed as an "attempt to kill the intent" of the Act. However, another person interviewed characterized the amendment movement as a "fair fight."

An effort to weaken the Act in the 1991 Session never occurred, after the governor declared opposition to changes to the Act.<sup>177</sup> Further efforts to weaken Chesapeake Bay protection activities have focused on local implementing ordinances and on the federal wetlands regulations.

#### Conclusions from the Case Study

This case demonstrates that a bill can have attributes that make the legislation, when enacted, unassailable for several years. These attributes are discussed below.

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<sup>177</sup> "Stalemates," Norfolk Virginian-Pilot and Ledger-Star, 23 February 1991, sec. B, 5.



### Environmental Factors

#### Saliency of the Issue

The Chesapeake Bay Protection Act was passed by tapping into a ground swell of interest in environmental protection, and an interstate pact to take necessary actions to save the Bay. There was no question that this legislation had passed because legislators viewed it as meritorious and of high interest to the general public. One legislator went so far as to say, relative to the Act "How can you vote against Mom and apple pie?" Another person interviewed, keying in on the interest cycle which had peaked in 1987 and 1988 for environmental protection, said "Any bill with the word 'environmental' in its title will pass." Relative to the amendment effort, it appears that the interest cycle had not totally waned nor had the saliency of the issue to the constituency at large.

#### Studies and Information

In reviewing the records of General Assembly action, it appeared that completion of studies on a given issue improved the chances of passage of related legislation. Most of the persons interviewed in this research agreed with this observation and gave several explanations which are applicable to this case study. They noted that a study is useful on a technical issue, such as pollutant abatement and non-point run-off, because increased knowledge on an issue increases a legislator's comfort level regarding the issue. A study can also generate support by involving more people in the review of a given issue. Interim study committees of the General Assembly often include citizens

or local officials, and often hold hearings around the state. This not only improves support for the bill by involving more people but also helps ensure that the proposed legislation addresses the concerns of a broad number of constituencies, thus improving chances of passage. Each of these factors were present in the Chesapeake Bay study and were factors contributing to passage. The presence of a thorough study also weakened amendment efforts as the issues addressed in the amendments could not be said to have been overlooked in drafting the original legislation.

The fact that the Act was a commitment to action of an inter-state pact also was not lost on legislators. Governor Baliles, in signing the pact, had used "get tough" rhetoric in the presence of the Governor of Maryland and representatives of the Chesapeake Bay Foundation and had said "Whatever it takes is what we'll do."<sup>178</sup> when asked about costs of the program. In the face of that, it is understandable that he was opposed to efforts to amend the Act based on cost considerations.

#### Legislative Elections

Legislative elections were probably on the minds of some legislators in considering their position of the Chesapeake Bay issue. In the previous legislative election, three legislators who had been strong advocates for the development industry and pro-growth issues had been unseated. Legislators who opposed the Chesapeake Bay initiative had worked to get compromise language in the bill. However, further efforts

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<sup>178</sup> Cyril T. Zaneski, "Officials sign Bay cleanup pact, face questions on cost, resolve," Norfolk Virginian-Pilot, 16 December 1987, sec. D, 1.

to undermine the bill by adding funding requirements or more local autonomy in setting development guidelines clearly would have brought the attention of the Chesapeake Bay Foundation and would have threatened the legislators re-election bids.

### Political Factors

#### Support of the Governor

Of the persons interviewed for this study, 16 said that gubernatorial support for an issue enhanced the chances of related legislation passing. Several specifically mentioned the role Governor Baliles played in passage of the Chesapeake Bay Preservation Act and Governor Wilder's role in preventing amendments to the Act in later sessions.

The Chesapeake Bay Preservation Act was one of Baliles major legislative initiatives for 1988 and succeeded, despite considerable protests from local governments regarding the infringement upon the local authority to control development. This was explained by policy actors by noting that a governor, as a representative of the entire state, has a broader vision of the needs of the state and thus is viewed as less parochial than other policy makers. With only three officials elected on a state-wide basis in Virginia, the governor can speak for the state virtually unopposed.

Several persons interviewed qualified the strength of the governor by noting the influence varied with the standing of the governor, during a given session of the General Assembly. At the time of the 1988 Session, Governor Baliles had a very high standing and had a high success with his legislative initiatives. Given the large margins by

which the Chesapeake Bay Preservation Act passed in both houses, the governor's support was a very positive influence at work. Moreover, the governor's opposition to amending the act was of considerable importance in fending off subsequent attempts to amend the Act.

#### Interest Group Support and Opposition

There was both strong support and opposition to this legislation from various interest groups. Environmental groups and many citizens supported the protection of the Chesapeake. The Bay initiative was part of an inter-state program with Pennsylvania and Maryland to protect the Bay through a comprehensive approach to the various pollutants of the Bay. The Chesapeake Bay Foundation and other environmental groups played a strong role in this program and generated grass root support for the Chesapeake Bay Preservation Act. The magnitude of this grass root support was not lost on the legislators in Virginia. The Act passed by a vote of 93 to 3 in the House, and 36 to 3 in the Senate.

Clearly, the developers and local officials had a large task in lobbying against the bill. It appears that they ultimately decided to use the tactic which was used with some success in the tree protection issue--strike the best compromise possible when passage is imminent and seek amendments in later years to modify the legislation. In this case, the later amendments have not been forthcoming. This does show a similarity to the tree protection issue as regards the potential for legislation to be altered by future amendment after many advocates have ceased to monitor the issue. As one environmentalist summed up this

concern, "It just shows that the proponents of the act cannot afford to let their guards down."<sup>179</sup>

#### Party Support

The proposed bills to amend the Chesapeake Bay Act entered in 1990 were supported by several Republican legislators. However, given the widespread concern among local governments concerning the impacts of the Act on local development, it is probable that any bill to amend the Act would have drawn support from both parties. Likewise, some members of both parties would have opposed amendment because of the pressure from environmentalists and the constituency at large.

#### Institutional Factors

##### Committee Support

The Chesapeake Bay Act had strong support of committees in both the House and the Senate. It is unlikely that these committees would support revisiting the legislation for any but the most minor adjustments. The major objection to the Act among persons seeking the amendments was that the General Assembly did not provide funds for the local implementation of the provisions of the Act, and that the state was taking over local development authority. It is not likely that the budget committees of either chamber would have looked favorably on the provision of funding for all mandates to local governments. It is also unlikely that the very committees that refused to increase local power

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<sup>179</sup> Cyril T. Zaneski, "Chamber critique of Bay Act draws fire," Norfolk Virginian-Pilot, 13 September 1990, sec. D, 3.

in development areas (relative to tree protection and stop work orders) would be sympathetic to cries of undue state intervention in local activities. This issue had been raised during initial deliberation on the Bay Act and had been countered with the concept of the state's overriding interest in protection of the Bay.

#### Clout of Key Legislators

Key legislators were involved on both sides of the amendment issue. Senator Fears (D-Accomack), a senior member of the Senate Committee on Agriculture, Conservation, and Natural Resources went on record as saying "I don't want to give up all development for a pristine Bay...I'm not going to put this burden on taxpayers in the localities."<sup>180</sup> Delegate Murphy (D -Warsaw), the chief patron of the Bay Act and a senior member of the House Committee on the Chesapeake Bay and its Tributaries, supported a conciliatory approach which provided more time for public comment on the regulations related to the Bay Act, but did not back down on the provisions of the Act itself.

#### Number of Co-Patrons

Legislative studies found that a large number of co-patrons improved chances of a bill passing. Of those persons interviewed for this study, eleven said that this did help as more co-patrons was an indicator of the level of support and co-patrons could serve as cue providers for those uncertain about their vote on the bill.

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<sup>180</sup> Cyril T. Zaneski, "Bay landowners get time; lobbyists go to work," Norfolk Virginian-Pilot, 18 August 1989, sec. D, 1.

Those who did not agree that the number of co-patrons helped a bill, said that the clout of the patrons mattered more than the numbers and that one or two powerful people were more likely to ensure passage of a bill than a lot of junior legislators. Those with this view did note, however that if more than 50 percent of the members of each house were co-patrons, a bill would probably pass unless it was changed significantly from when the members signed as co-patrons. This was the case in the Chesapeake Bay legislation; 55 delegates and 22 senators signed as co-patrons. It could be expected that similar lines would be drawn in attempts to amend the Bay act, although some co-patrons could be expected to shift their position due to real concerns raised by their local governments and constituencies relative to the economic impact of the Bay Act in their locality.

#### Legislative schedules

Legislative schedules do not appear to have been an issue in the amendments to the Chesapeake Bay Act. Given the limited sessions of the General Assembly, latitude had been provided in the bill for executive discretion in implementing detailed regulations of the bill. This latitude was used to ease local concern over implementation dates but did not change the overall intent of the original bill. Such latitude is necessary to ensure smooth operation of the government when legislatures do not meet full time.

### Precedent Setting

The proposed amendments would have set a precedent relative to the funding issue. Both the federal and state government often pass regulations without fully funding the cost of implementation. The state was not likely to allow a precedent to be set requiring that no regulations could be passed, absent full funding of the cost of implementation. This would have undermined the state's ability to provide minimum standards for issues as diverse as road markings to educational curriculum.

Ultimately, the state did provide grant resources to assist in meeting some of the planning requirements of the Bay Act. Not funded was the less tangible costs in lost development opportunities. Given the difficulty in computing such costs, the compromise to help fund planning was probably reasonable and did not set onerous precedents.

### Nature of the Legislation

#### Regulatory Legislation

The proposed amendments did not address new regulations but rather, a relaxing of regulations placed in affect with the original Chesapeake Bay bill. Easing of regulations would appear to be something which legislators could support. In this case, however, there was a sense that local option would not work. Delegate Steiffen (D-Hampton), chairman of the House Committee on the Chesapeake Bay and Its Tributaries, said such an option would leave the Act a "toothless tiger."<sup>181</sup>

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<sup>181</sup> Bill Byrd, "Panel backs bill to limit Bay-area development," Norfolk Virginian-Pilot and Ledger-Star, 6 February 1988, sec. A, 2.



Delegate Forehand, in addressing the need for state regulation of land use said "The general good has to take precedence over the interests of a few."<sup>182</sup> It is clear that the legislators, having taken a stand on the importance of the Bay Preservation Act, were not reneging on their commitment to it.

#### Service Provision

The amendments were not providing a service to any constituent group, although the amendments would have provided relief to local governments and developers. However, it would have done so at a cost to citizens who placed value on the Bay and wished its preservation to move forward.

All of the above discussed factors helped in the passage of the Chesapeake Bay Preservation Act. Perhaps all of these factors, however, are indicators of what a number of the legislators interviewed said was the final determinant of their support for a bill--that of merit of the concept. There clearly was a sense that the time was right for action on preservation of the Chesapeake Bay, and the bill proposed was of merit for the state and for various constituencies. Amendment to something which "seemed so right" was something which was not to be done lightly.

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<sup>182</sup> Byrd, "Panel backs bill," 2.

Case Study 9: Non-Tidal Wetlands Legislation

Legislative Summary and History

In 1988, Delegate Forehand (D-Chesapeake) sponsored a House Bill 1037<sup>183</sup> to amend the Conservation Title of the Code of Virginia to provide for protection of tidal and non-tidal wetlands as a part of the Chesapeake Bay preservation initiative. The proposal pitted environmentalists against builders, developers, and local government officials, as with the Chesapeake Bay Preservation Act, but lacked the widespread public support which the Chesapeake Bay Preservation Act enjoyed. As a result, the bill was carried over to the 1989 Session but failed to be enacted in that session.

The cities of Virginia Beach and Hampton, in their 1989 legislative proposals, addressed the provisions of House Bill 1037. The City of Virginia Beach, concerned over the impact which the proposed bill would have on the agribusiness, recommended changes in definition of soils included in the legislation, and recommended exemptions for some agriculture activities which were regulated in other manners. Hampton simply requested that a task force of all interest groups be formed to review the non-tidal wetlands issue.

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<sup>183</sup> Commonwealth of Virginia General Assembly. House. A Bill to amend the Code of Virginia relating to uses and activities affecting tidal and nontidal wetlands; penalty, 1988 Session. H.B. 1037 (January 26, 1988).

### The Legislative Process

The actions which occurred in the 1989 Legislative Session relative to House Bill 1037 met the needs of the cities of Virginia Beach and Hampton to some extent. These actions are described below.

#### 1988 Action

By way of background, House Bill 1037 was introduced in 1988 with 53 delegates and 13 senators as co-patrons. It was referred to the House Committee on Conservation and Natural Resources from which it was reported out by a vote of 17 to 0 with a substitute bill. This substitute bill passed the House by a vote of 92 to 5.

The bill was then referred to the Senate Committee on Agriculture, Conservation, and Natural Resources which carried it over to the 1989 Session. It was in this interim between the 1988 and 1989 sessions that the local governments affected by the bill studied the bill's impact and registered their concerns.

#### 1989 Action

In the 1989 Session, the Senate Committee on Agriculture, Conservation, and Natural Resources referred a substitute bill by a vote of eight to seven. Upon second reading on the floor of the Senate, the chairman of the Senate Committee on Agriculture, Conservation, and Natural Resources moved that the bill be recommitted to the committee. This motion was approved, sending the bill back to the committee for further consideration. In that the committee chairman had supported the bill in the committee vote, this motion was put forth probably to keep

the bill from certain defeat on the floor or to allow consideration of concerns raised in Senate discussion of the bill. The various substitutes had significantly weakened the original bill but it was still considered better than the existing state legislation regarding wetlands management which was spread over many agencies.<sup>184</sup>

No further action was reported on the bill in the 1989 Session and, given that it was a short session, the bill could not be carried over for further consideration in 1990. In an effort to keep the issue before the General Assembly, Senator DuVal (D-Fairfax), a senior member of the Senate Committee on Agriculture, Conservation and Natural Resources, sponsored a study resolution which was referred to the Senate Committee on Rules. This committee re-referred the resolution to the Senate Committee on Agriculture, Conservation, and Natural Resources which took no action, thereby killing the study resolution.

As a final note of progress on the non-tidal wetlands issue, Senator Gartlan (D-Fairfax) introduced a bill<sup>185</sup> directing the Council of the Environment to assess non-tidal wetlands management efforts in the state and report to the General Assembly by January 1992. This bill passed both houses and was signed by the governor, making further action on the wetlands issue possible in 1992.

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<sup>184</sup> Bill Byrd, "Baliles may drop nontidal-wetlands protection bill," Norfolk Virginian-Pilot, 23 November 1988, sec. A,9.

<sup>185</sup> Commonwealth of Virginia General Assembly. House. A Bill providing that a comprehensive assessment of the Commonwealth's nontidal wetland management efforts be conducted by the Council on the Environment, 1990 Session. S.B. 277 (January 31, 1990).

### Conclusions from the Case Study

This case serves as a counterpoint to the successful Chesapeake Bay Preservation Act which was also introduced in 1988, had similar lobby groups supporting and opposing it, and which was enacted by an overwhelming majority in both houses. A discussion of why the wetlands issue failed, although similar in many ways to the Chesapeake Bay Preservation Act, is provided below. Emphasis is placed on the role which the local government concerns may have played in the failure of the wetlands bill.

#### Environmental Factors

##### Saliency of the Issue

As noted, the wetlands issue was of interest to various constituency groups and was supported strongly by environmental groups. While there was still interest in environmental issues in Virginia, the magnitude of the wetlands issue gave cause for concern and a need for study.

In addition, the perceived need for the legislation was affected by the presence of federal regulation relative to wetlands. Development of state criteria for wetlands management would serve to complicate the issue and might be a futile effort if federal standards took precedent over state efforts. Not to be ignored is the observation made by one person interviewed who said "why take on a controversial issue like wetlands regulation when the federal government is already acting; let the Army Corps do it."

### Studies and Information

Studies can be used to improve the chances of a bill's passage by providing needed technical data, examining alternatives, building consensus, and increasing legislator's comfort level regarding a technical issue. Many of the people interviewed provided a counterpoint to this by saying a study could also be a polite way to slowly kill an issue, or to allow the opposition a chance to be heard or get organized. Since the study on wetlands has not yet been returned to the General Assembly for action, the effect a study will have on the wetlands issue is not yet known.

That is not to say that a study was not the appropriate option in this case. The definition of wetlands is very technical and different definitions can cause wide variations in the impact of wetlands regulations on an area. There is also technical disagreement on the value of individual tracts of wetlands in the overall environment and what the policy on replacement of wetlands should be. Given that the Chesapeake Bay Preservation Act has taken longer to implement than expected, and that new federal regulations concerning the environment are currently in the implementation phase in many Virginia localities, a study of the wetlands issue may have been the most prudent course.

### Legislative Elections

Given the far reaching economic impacts which wetlands regulations were likely to have on localities in Virginia, it is possible that the lack of action in 1989 was related to the upcoming election in the autumn of that year. Again, if the federal government was going to deal

with the issue in some manner, it would not make political sense to take on such a controversial issue in an election year, absent strong public support for the issue. An interesting note provided by one person interviewed was the effect of the 1988 presidential election on the wetlands issue. This person noted that one slogan of President Bush's campaign had been "No net loss of wetlands." This certainly raised the issue in the minds of the public and probably provided some support for the issue both in the 1988 and 1989 General Assembly sessions.

### Political Factors

#### Support of the Governor

In 1988, Governor Baliles had been a strong supporter of the wetlands legislation. While this did not ensure its passage, it sent a strong message of the support which the bill would have from the executive branch. In 1989, however, the governor offered an alternative to the bill by suggesting that much of the desired outcome could be accomplished by improvements to existing review processes and regulations. Most of these could be handled administratively, thus removing the issue from the legislative arenas where it promised to be hotly contested. Whether the governor was yielding to the "consternation, controversy, and clamor"<sup>186</sup> described by a member of his staff, or was merely getting his environmental agenda accomplished another way is unclear. His switch in positions certainly sent a message which dampened interest in the bill among legislators.

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<sup>186</sup> Byrd, "Baliles may drop wetlands bill," 9.

### Interest Group Support and Opposition

The wetlands bill had builders, some property owners, and local government officials arrayed against it, as did the Chesapeake Bay Preservation Act. However, an additional group opposing the wetlands act was the agriculture community. While this group had expressed some concern over the Bay act, the manner in which it was to be implemented by localities appeared to limit the impact on farm operations. The wetlands act, however, would have major impacts on farmers in the way they managed crops and soil. Adding to this high level of opposition, the local governments had a year to review the proposed wetlands act and realized what the magnitude of the impact would be on development in many growing localities. In the interim period, the local governments cooperated on cost estimates, studies of land lost from production, and general opposition to the wetlands proposal. In addition, the home-builders reversed their position in this period from one of general support in 1988 to one of opposition of the bill in 1989.<sup>187</sup>

The environmental groups supported the legislation but were less able to muster grass roots citizen support for this issue because of the complexity of the issue and the lack of understanding of the importance of wetlands. The considerable data provided by the opposition regarding economic impact overpowered arguments put forth by the environmental lobbies supporting the bill. The conclusion of many legislators was that the bill was not in the best interest of their constituencies and needed further consideration.

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<sup>187</sup> Byrd, "Baliles may drop wetlands bill," 9.



### Party Support

While the wetlands bills were patroned by Democrats, neither the votes in the House nor the committee vote in the Senate on this issue appeared to divide along party lines. In addition, there were strong Democratic voices speaking both for and against the issue. This is consistent with other environmental legislation studied which did not appear to have a partisan base for or against the issues. Given that this issue tended to have more opposition from developing areas of the state, it is possible that 1990 redistricting will add enough Republicans from suburban developing areas to develop a more partisan record on environmental issues which impede growth.

### Institutional Factors

#### Committee Support

The House Committee on Conservation and Natural Resources reported the wetlands bill by a unanimous vote. The Senate Committee on Agriculture, Conservation, and Natural Resources split its vote to report the bill by a vote of 8 to 7. Although one person interviewed said this committee killed any bill that might hurt farmers, the vote was not divided along urban-rural lines, agriculture-nonagriculture lines, nor along areas of impact-non-impact of the bill. From this it can be inferred that committee members voted for or against the bill based on other factors than obvious interests of their districts. Such a split vote sent the message to the Senate that there was wide disagreement on the bill among the knowledgeable members of the committee. The

disagreement never was resolved in a manner which allowed passage of the bill.

Many of the people interviewed indicated that a split vote in a committee would often cause a bill to fail on the floor. Most of those interviewed attributed this to the message it sent the floor as to the lack of committee agreement, and to the problem with committee members who were knowledgeable on the issue speaking against the issue on the floor. One person, however, said the split vote did not represent a causal relationship with floor action but, rather, was an indicator of a contentious issue which would be equally contentious on the floor and in committee.

On a question regarding the importance of committees in determining the outcome of a bill, there was much more consensus among those interviewed. Fourteen of 19 respondents characterized committee action as very important or critical. Samples of comments provided as follow-up included: "a good bill can be killed by a committee;" and "a bill has a good chance if it survives the committee."

In that the fate of a bill is by and large determined by action in the committees, the question regarding how a legislator can be assigned to committees important to his constituency, and of how a bill killed by a committee can be revived are of interest. Regarding the informal factors<sup>188</sup> which can lead to committee assignment, nine of 19

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<sup>188</sup> Formal factors are set by the rules of each chamber or by precedent. Senate committees have 15 members each and House committees 20 (or 15 in committees with small jurisdictions.) Each legislator is assigned to three standing committees (with a few exceptions for small committees or areas of special interest.) Committees are balanced by membership from each party and from each congressional district of the state. These "formal" factors control committee membership to some degree but do not explain differences among

respondents mentioned talking to the Speaker of the House, the president pro tem of the Senate, or the chamber majority leader. This supports Hamm's<sup>189</sup> study of the California legislature in which he found that, after formal factors were taken into consideration, committee appointments depended on the presiding officers' political philosophy.

#### Clout of Key Legislators

The clout of key legislators on this issue may have served to cancel one another out. Senator DuVal and Senator Gartlan both sponsored study resolutions on wetlands issues. Delegate Forehand patroned the wetlands bill and went on record to explain publicly the environmental importance of wetlands. Arrayed against any further land control issue are senior senators such as Senator R. J. Holland (D-Isle of Wight) and Senator Fears (D-Accomack), both members of the Senate Committee on Agriculture, Conservation and Natural Resources. The presence of key legislators on both sides of the issue left legislators who were uncertain as to what stance to take.

#### Number of Co-Patrons

This case shows that a number of patrons can help a bill pass in a given house. In this case, the number of delegates who were co-patrons

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assignments for legislators of the same party from the same congressional district. This question focused on what accounted for this latter set of differences.

<sup>189</sup> Keith Hamm, "Legislative Committees, Executive Agencies, and Interest Groups," In Handbook of Legislative Research, ed. Gerhard Lowenberg, Samuel C. Patterson, and Malcolm Jewell, (Cambridge, Mass.: Harvard University Press, 1985), 578.

was over half the total number of delegates. The bill passed in the House with this support. By contrast, only 13 senators served as co-patrons to the wetlands bill. The patrons of the wetlands bill were also patrons of the Chesapeake Bay bill. However, nine of the senators who co-patroned the Chesapeake Bay bill did not co-patron the wetlands bill, sending a message that the wetlands bill was less understood, more problematic for some constituencies, or flawed in some way. The failure of the wetlands bill in the Senate reflected the concerns which these senators must have had for the bill.

#### Legislative Schedules

The actual length of the legislative session probably did not play a role in the outcome of this legislation because the vote by the Senate Committee on Agriculture, Conservation, and Natural Resources was so close that additional time to review the issue would not have brought about enough consensus to enable passage of the bill on the floor of the Senate. A factor in the General Assembly schedule which may have worked against the bill was the part time nature of the Assembly. The need to carry over the legislation from one session to the next allowed the opposition ample time to organize and be heard. While this may be an appropriate manifestation of "democracy in action," a continuous session might have enabled a compromise to be worked out to allow passage of some wetlands protection legislation before the opposition held sway in the interim of the sessions.

### Precedent Setting

Senator R. J. Holland, in speaking of the wetlands proposal, said "The state's not buying the land. It can't afford to. So you're not taking it away, but you're rendering the land useless, and you're doing it without the process of eminent domain."<sup>190</sup> The potential precedent which this was setting, and the magnitude of the acreage involved was the center of the legislative controversy over the wetlands bill. The bill, in its strictest interpretation would halt development on thousands of acres of land in the rapidly developing eastern portion of the state. As Senator Fears put it "We can clean up the Bay if we stop all building, But where are the people going to live? Cuba?"<sup>191</sup> This represented the fear, not only of landowners but of local government officials who stood to lose millions of dollars in tax revenue if large tracts of land were removed from their inventory of land available for development. While the cause may have seemed worthy, the precedent of taking that much land out of use was too great for legislators to support the issue.

### Nature of the Legislation

#### Regulatory Legislation

This legislation was regulatory with very strong concerns as to the denying of use of a person's property. As the bill's patron, Delegate Forehand, said "Any time you try to tell someone what to do

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<sup>190</sup> Wharton, "Wetlands measure creates battle lines," 4.

<sup>191</sup> Zaneski, "Bay landowners get time," 1.

with their land, it's pretty dangerous."<sup>192</sup> Opponent Senator R.J. Holland characterized the bill as "telling people they can't use that land for any reason whatsoever."<sup>193</sup> Further complicating the regulatory issue was the presence of federal regulations concerning wetlands. Federal regulations were cited as one of the reasons a study of wetland management was needed prior to action on the state wetlands bill. This growing body of regulation impacting on development was one of the reasons cited by developers as the source of their concern over additional regulations.<sup>194</sup> The U.S. Army Corps of Engineers have faced considerable criticism and difficulty in implementing the wetland provisions of the federal Clean Water Act.<sup>195</sup> The study which was ultimately completed by the Council on the Environment centered on this issue of overlaying regulations.

#### Service Provision

This issue was not service-based unless related to the benefit to future generations of a better environment. The immediate result was anything but a service to a large constituency group and, therefore, lacked support.

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<sup>192</sup> Tony Wharton, "Wetlands measure creates battle lines," Norfolk Virginian-Pilot and Ledger-Star, 6 March 1988, sec. B, 1.

<sup>193</sup> Wharton, "Wetlands measure creates battle lines," 4.

<sup>194</sup> June Leonard, "Developers fear impact of wetlands bill," Norfolk Virginian-Pilot and Ledger-Star, 15 October 1988, sec. D, 1.

<sup>195</sup> Joseph Coccaro, "Designating wetlands can be a quagmire," Norfolk Virginian-Pilot and Ledger-Star, 8 December 1990, sec. D, 1.

To summarize the wetlands regulation issue, it is clear that a large number of co-patrons cannot ensure passage of a bill when powerful lobbies are involved; when lobbying efforts against it are intense and from a wide spectrum of interests; the need for the bill becomes questionable; and when many technical questions are raised which have not been answered. At least some of these negative factors would need to be abated prior to successful action on a bill.

Case Study 10: Statewide Recycling Objectives

Legislative Summary and History

As a part of its 1989 Legislative Program,<sup>196</sup> the City of Newport News indicated its support for a state-wide comprehensive program to reduce solid waste and promote recycling as an integral part of a municipal solid waste disposal plan. A corollary to this position was that the state should not mandate local recycling objectives until a state-wide plan was in place. This legislative item was a response to recycling legislation enacted in the 1988 Session of the General Assembly, and to growing concern and activity on the solid waste disposal problem state-wide.

The Legislative Process

The critical need for a state-wide response for waste reduction and recycling was first dealt with by the General Assembly in 1987. In that session, three study resolutions were introduced "to study alternatives for improving waste volume reduction and recycling efforts."<sup>197</sup> Of these, House Joint Resolution 292 was approved by the House (97 to 0) and by the Senate on a voice vote). Senate Joint Resolution 132 passed both the House (95 to 0) and Senate (on a voice vote). In addition,

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<sup>196</sup> City of Newport News, 1989 Legislative Program, Adopted October 25, 1988, item no. G.

<sup>197</sup> Commonwealth of Virginia General Assembly. House. Establishing a joint subcommittee to study alternatives for improving waste volume reduction and recycling efforts, 1988 Session, H.J.R. 292, (January 27, 1987).



House Bill 1000 authorized the transfer of litter control activities from the Department of Conservation and Historic Resources to the Department of Waste Management,<sup>198</sup> and expanded the responsibilities from litter control to recycling and anti-litter. These actions show:

1. A growing concern for the issue of solid waste disposal in the state and a recognition that recycling is an important component of any waste disposal plan; and

2. That recycling is more appropriately viewed as a waste management technique, rather than strictly a conservation issue. This latter point emphasizes the concern of local governments with burgeoning solid waste and limited land fill space, as opposed to the environmentalist view of saving natural resources.

#### 1988 Action

Pursuant to the study resolutions described above, a report of a joint subcommittee was presented to the 1988 Session of the General Assembly by way of Senate Document No. 22.<sup>199</sup> This report included several proposed legislative items as follows:

1. A bill to require localities to develop public recycling plans, to be approved by the State Department of Waste Management. (H.B. 572).

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<sup>198</sup> Commonwealth of Virginia General Assembly. House. A Bill to amend and reenact the Code of Virginia transferring responsibility for litter control and recycling in the Commonwealth from the Department of Conservation and Historic Resources to the Department of Waste Management; penalties, 1987 Session, H.B. 1000, (January 16, 1987).

<sup>199</sup> Commonwealth of Virginia General Assembly. Senate. Report of the Joint Subcommittee Studying Alternatives for Improving Waste Volume Reduction and Recycling Efforts, 1988 Session, S.D. 22, (March 12, 1988).

2. A resolution to request the Department of Solid Waste to establish a comprehensive solid waste management program which emphasizes recycling as one component, and which helps develop markets for recycled materials. (H.J.R. 81).

3. A bill to require the Department of Conservation and Natural Resources and the Department of Transportation to submit cost estimates to place and maintain recycling containers at state parks, waysides, and rest areas. (H.B. 571).

4. A resolution to continue the work of the subcommittee studying solid waste and recycling. (H.J.R. 80).

Each of these proposed items was introduced during the 1988 Session by the bill or resolution noted after each item above. Each of the proposals dealing with state agencies and the General Assembly study committee passed both houses, as did the bill to require localities to develop waste management plans. The latter item is discussed in more detail below.

#### House Bill 572

As noted above, House Bill 572 was based on one of the legislative actions included in the recommendations of the joint subcommittee studying alternatives for solid waste volume reduction and recycling efforts. Delegate Quillen (D-Scott), a member of the study committee, sponsored the bill. Three delegates, two of whom were members of the

committee, and a senator serving on the study committee, were co-patrons of the bill. The bill proposed to:<sup>200</sup>

- Amend the Code of Virginia to require each locality to develop a plan for operation of recycling facilities easily accessible to the public;
- Require such a plan to be submitted to the Department of Waste Management by April 1, 1989; and
- Place in effect the provisions of the act only upon appropriation of funds to the Department of Waste Management to provide localities assistance in developing the required plans.

The bill was referred to the House Committee on Counties, Cities, and Towns which reported the bill, with amendments, by a vote of 18 to 1. After a first reading on the floor, Delegate Quillen moved that the bill be referred to the House Committee on Appropriations, of which he was a member. This action was so that the Appropriations Committee could consider the provision dealing with the appropriation for the Department of Waste Management. This action ensured that the appropriation issue was addressed during budget development so that the bill was not enacted and then not placed in effect because of a lack of the required appropriations. The Committee on Appropriations reported the bill, with amendments, by a vote of 18 to 0. The House passed the bill by a vote of 92 to 4. The amendments allowed localities additional time (until January 1990) to file the plan and removed a specific amount of appropriation and required only that an appropriation be made to the Department of Waste Management.

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<sup>200</sup> Commonwealth of Virginia General Assembly. House. A bill to require local jurisdictions to develop recycling plans, 1988 Session, H.B. 572, (January 25, 1988).

In the Senate, the bill was referred to the Committee on Local Government. By a vote of 13 to 2, this committee reported the bill with amendments. The committee amendments, which made the preparation and filing of local solid waste plans optional, rendered the bill almost meaningless except as a position statement on legislative interest in recycling and the solid waste problem.

It is of note that one of the two committee members voting against the amended bill in committee was Senator Marye (D-Montgomery), a strong advocate of recycling<sup>201</sup> and a member of the study subcommittee on solid waste and recycling. Since records of committee deliberations are not kept, it can only be assumed that he voted against the actual content of the bill, not its concept. This is borne out by the substitute bill the senator proposed on the floor of the Senate which did not significantly change the committee proposal, but added to it a section establishing a beverage container recycling program (a "bottle bill"). The substitute was not allowed on a ruling by the chair. The amended bill passed the Senate by a vote of 39 to 1 and, because the Senate version differed from the House version, it was returned to the House for consideration.

The House rejected the Senate amendments by a vote of 7 to 86 and returned the bill to the Senate. The Senate insisted on its amendments and requested a conference committee. To end the impasse, Delegate Quillen moved that the House accept the Senate amendments. His motion passed on a vote of 90 to 4, with all members of the solid waste study committee casting "yea" votes. The bill was then signed into law by the

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<sup>201</sup> "Another 'bottle bill' gets tossed away by Senate," Norfolk Virginian-Pilot, 24 January 1989, sec. D, 4.

governor. The House vote to accept the Senate version of the bill was cast on March 11, 1988; the General Assembly 1988 Session adjourned March 12, 1988. From this, it can be inferred that the acceptance of the Senate version was less an agreement with that version than a decision that an optional solid waste management program was better than none at all.

The position taken by Newport News for the 1989 Session reflects a continuing sense of need for a state-wide plan, and an anticipation on the part of city policy makers that a move might be undertaken in the 1989 Session to win back the concessions in language which the House made in 1988 regarding the solid waste issue.

#### Senate Bill 160

A second bill which was introduced in the 1988 Session of the General Assembly dealing with recycling and solid waste issues was proposed by Senator DuVal (D-Fairfax) and was co-patroned by Senator Gartlan (D-Fairfax) and Senator Waddell (D-Loudoun). This bill proposed to.<sup>202</sup>

- Amend the Code of Virginia Title 15.1--Counties, Cities, and Towns; and
- Allow localities to enact ordinances requiring separation of household garbage or other non-hazardous solid waste to be separated by type at the point of generation to facilitate recycling.

This bill, to provide the needed authority to implement mandatory curb-side recycling, was referred to the Senate Committee on Local

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<sup>202</sup> Commonwealth of Virginia General Assembly. Senate. A Bill to Amend and Reenact the Code of Virginia relating to solid and hazardous waste management, 1988 Session. S.B. 160, (January 21, 1988).

Government which reported it, with amendments, by a vote of 13 to 0. The amendments exempted from local ordinance any building over three stories high, constructed before July 1, 1989. The amended bill passed the Senate en bloc by a vote of 39 to 0.

The bill was then referred to the House where it was referred to the Committee on Counties, Cities, and Towns. By a vote of 14 to 4, the committee reported the bill with amendments. One committee amendment required that a local ordinance could not impose any liability on an owner or manager of a commercial property or apartment building when the tenants fail to comply with the ordinance if the owner had provided a facility for separating trash. This amendment was refused by the House in favor of an amendment which imposed no liability on such owners or managers. This was a victory for the Chamber of Commerce, which had lobbied to make businesses exempt from the recycling requirements.<sup>203</sup> With this amendment, the bill passed the House by a vote of 65 to 27, and was returned to the Senate for consideration of the House amendments. On a motion by Senator DuVal, the Senate accepted the House amendments by a vote of 38 to 2, sending the bill to the governor for signature into law.

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<sup>203</sup> This exemption has created a burden for localities which, after one to two year's experience in recycling, have come to feel they cannot reasonably meet the highest rates of recycling mandated by the state by addressing only residential solid waste.

1989 Action

In 1989, two bills dealing with recycling and solid waste management were proposed. An additional five bills were proposed on beverage container recycling and reuse, and one was proposed to ban polystyrene food containers. These latter bills are not discussed herein because container recycling was not an issue identified in the Hampton Roads' city's legislative plans and, because of the different focus on the method of dealing with the waste stream involved in container legislation, are viewed as a discreet issue from general recycling issues.

House Bill 1743

House Bill 1743 was patroned by Delegate Quillen, a member of the solid waste/recycling study committee. The bill had 29 delegates and three senators as co-patrons, including two members of the study committee. One of the study committee members who did not patron the bill was Delegate Maxwell (D-Newport News). In that he voted for the bill on the floor of the House, it is possible that the absence of his name as a co-patron of the bill was in recognition of the concerns regarding implementation of local waste management plans absent a state waste management plan expressed by Newport News in its legislative program. House Bill 1743 proposed to:<sup>204</sup>

- Amend the Code of Virginia Title 10.1--Conservation Generally;
- Authorize the Board of Waste Management to promulgate regulations requiring local and regional waste management plans.

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<sup>204</sup> Commonwealth of Virginia General Assembly. House. A bill to amend and reenact the Code of Virginia, relating to regional and local solid waste management plans, 1989 Session, H.B. 1743, (January 24, 1989.)

These regulations were to include solid waste issues such as recycling and reuse, storage, and treatment;

- Establish minimum recycling rates to be achieved by local or regional authorities or operations with specific target dates for each rate level; and
- Provide that permits for solid waste management facilities would not be issued after July 1, 1992 unless approved solid waste management plans were on file with the Board of Waste Management.

This bill was referred to the House Committee on Conservation and Natural Resources where it was reported, with minor amendments, by a vote of 18 to 0. The bill passed the floor of the House by a vote of 99 to 0, sending it to the Senate for consideration.

The Senate Committee on Agriculture, Conservation, and Natural Resources, by a vote of 13 to 1, reported the bill to the floor with minor amendments. The Senate approved the bill by a vote of 39 to 1 and sent the bill back to the House for consideration of the Senate amendment. The House approved the Senate amendment, thus sending the bill to the governor for signature into law.

#### House Bill 1987

This bill was patroned by Delegate Morgan (R-Gloucester), a member of the House Committee on Counties, Cities and Towns, and the House Committee on the Chesapeake Bay and Its Tributaries. The bill was co-patroned by 17 delegates and three senators. This bill proposed to:<sup>205</sup>

- Amend the Code of Virginia Title 10.1--Conservation Generally;

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<sup>205</sup> Commonwealth of Virginia General Assembly. House. A bill to amend and reenact the Code of Virginia, relating to solid waste management plans and permits for solid waste combustion facilities, 1989 Session. H.B. 1987, (January 24, 1989).



- Authorize the Board of Waste Management to promulgate regulations requiring local and regional waste management plans. These regulations were to include solid waste issues such as recycling and reuse, storage, and treatment;
- Establish minimum recycling rates to be achieved by local or regional authorities or operations with specific target dates for each rate level;
- Provide that permits for solid waste management facilities would not be issued after July 1, 1992 unless approved solid waste management plans were on file with the Board of Waste Management; and
- Provide that permits for solid waste combustion facilities could not be issued after 1995 unless the authority requesting the permit demonstrated that it had substantially met the recycling rates set forth in the bill.

With the exception of the provision regarding permits for solid waste combustion facilities, this bill had language almost identical to House Bill 1743, described above.

The bill was referred to the House Committee on Conservation and Natural Resources where it was reported as stricken from the docket by a vote of 14 to 0. It is not clear whether this was done because:

1. The patron of House Bill 1743 was a Democrat and was more senior than the patron of House Bill 1987;
2. House Bill 1743 had more co-patrons than House Bill 1987, thus increasing known support for the bill; or
3. The provision in House Bill 1987 regarding combustion facilities was deemed undesirable or unnecessary by the committee.

Whichever the case, consideration of House Bill 1987 ended in the House committee. The fact that House Bill 1743 passed, absent a stronger requirement for a state-wide solid waste plan, yet with a requirement for local or regional solid waste plan means that the concerns raised by the City of Newport News were substantially

unresolved. To the extent that regulations would have to be promulgated and, during the time in which that was being accomplished, a state-wide plan might be put in place, the concern regarding local plans might be addressed. However, it is clear that local and regional solid waste agencies are being required to put in place recycling plans to meet the minimum rate requirements enacted in House Bill 1743, absent a final state-wide solid waste plan.

#### Conclusions from the Case Study

This case portrays numerous issues surrounding the legislative process in Virginia. These are detailed below.

#### Environmental Factors

##### Saliency of the Issue

The legislative history of this issue demonstrates clearly that different public policy issues emerge as top legislative agenda items at various times. In 1987, recycling was just emerging as an issue of importance to many members of the General Assembly. That year, two study resolutions were adopted overwhelmingly and the responsibility for recycling was transferred to the Department of Waste Management. This latter action embodies the underlying reason for the increased interest in the recycling and solid waste issue--that of the growing amount of waste to be disposed of and the limited landfill space and other options for disposal. As Delegate Quillen, a patron of several of the recycling

and solid waste bills said, "There is a landfill crisis in Virginia."<sup>206</sup> Federal and state guidelines to protect air and ground water resources have limited methods to dispose of solid waste and have greatly increased the cost of such disposal. At the same time, the proliferation of disposable packaging and products increased the tons of solid waste requiring disposal in a given county or city.

The solid waste problem was one which impacted every locality in the state, regardless of its urban or rural nature, or its geographic location. Although the urban areas were more stressed because of the large amounts of trash generated and the dwindling supply of available land for landfills, the less urbanized areas also felt the stress because of more limited revenue streams to deal with the problem. The widespread nature of the problem gave rise to support for various legislative proposals from legislatures representative of a cross section of the state. This led to passage by wide margins of recycling and solid waste bills

The wide margins of passage of the solid waste management bills may be attributed to the sense that the landfill issue was critical and that something had to be done with immediacy. The bill enjoyed the governor's support and, as one person interviewed observed that while it was clear that the bill would place a financial burden on localities, the environmental cost of doing nothing made the bill impossible to vote against. This is consistent with the interview responses in this research. Eleven of 16 persons, when asked what ultimately determined

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<sup>206</sup> "Separated-garbage bill wins approval by House," Norfolk Virginian-Pilot and Ledger-Star, 27 February 1988, sec. B, 5.

whether a bill passed, said the merit, need, and logic of a bill prevailed. If it was a good bill, the legislature would enact it.

#### Studies and Information

When asked if a study on a technical issue would assist in passage of a bill, over half the persons interviewed said that it would help. Several of the reasons given for this phenomena were that studies built support for the issue and helped clarify the issues and the alternatives available. This view is clearly supported by this case. As one person interviewed noted, the study completed on the solid waste issue included representatives of business and industry so they had been involved in developing the alternatives and their concerns were at least articulated, if not resolved. Such involvement adds a comfort level for legislators supporting an issue because there is less likelihood that they will be attacked by an interest group who was not included in the deliberations on a bill or who did not know the bill was being proposed.

The report of the committee studying recycling and solid waste management proposed five legislative initiatives for the 1988 Session. Four were enacted as intended and one was enacted in a weaker form. That weakness was addressed, however, in the following year. While the solid waste issue in Virginia was of such a critical nature in 1988 that legislation to deal with it might have passed regardless of the study, the wide margins of approval given the legislation probably relates to the "comfort level" given legislators through the information on the complex issue of solid waste management which the report provided.

A note relative to studies relates to the accessibility of a study to non-expert legislators. Many study reports are very technical and of considerable length; the solid waste study report was written, for the most part, in laymen's terms and was of such a length that an interested legislator could reasonably read it during the Assembly session.

#### Legislative Elections

There were legislative elections in both 1987 and 1989, the years in which action was taken on the recycling and solid waste issues. While it is certainly possible that some legislators were moved to vote on the issue to show their responsible attitude on a serious problem, the legislative action seemed to be tied more to study completion than to election schedules. In fact, in 1989, the major campaign issues dealt with crime, gun control, and similar "law and order" issues.

#### Political Factors

##### Support of the Governor

The recycling and solid waste initiatives, while not a major component of the governor's legislative plan, were supported by both Governor Baliles and Governor Wilder. The limited involvement of the governor's office made the governor's support a non-critical factor in the movement of the bills through the General Assembly. However, even low-key support of the governor helps solidify support simply by sending the message that an issue will not be vetoed at the end of the process.

### Interest Group Support and Opposition

While local governments, business, and industry stood to incur additional costs from the solid waste management legislation, their opposition was muted by both their inclusion in the study process and tacit acceptance of the need to address the problem even though solutions would be costly. One group which did apply pressure for change in the legislation was the Chamber of Commerce to exempt business owners from recycling requirements. This pressure was successful, making the recycling objectives primarily an issue for residential properties.

### Party Support

This issue enjoyed the support of both political parties but had particularly notable support of very senior Democratic senators. This support probably helped to bring about the compromises which allowed enactment of the legislation. Absent their support, the bills may have been allowed to die with the closing of the legislative session.

### Institutional Factors

#### Committee Support

The solid waste and recycling bills enjoyed varying levels of committee support which led to variations in the success of the bills on the floor of the chambers. The power of a split committee vote was also illustrated in this case by the House votes on Senate Bill 160 and House Bill 572. In the Senate Bill, the House committee reported the bill by a vote of 16 to 4. While this is not a near-tie vote, one of the dissenting votes was cast by the second most senior member of the committee

and one of the most influential delegates in the House. The House floor vote reflected the committee's dissention even more strongly in a vote of 65 to 27. This was made more notable by the fact that the Senate had passed the bill on the uncontested calendar.

In the case of House Bill 572, the House committee vote was 16 to 0, a strong indicator of agreement on the bill. The House floor vote of 92 to 4 reflected the committee's agreement with the bill. The committee vote can be viewed as a bellwether of a controversial bill or as a cue to be taken by legislators on a floor vote. Both Senate Bill 160 and House Bill 572 passed the Senate by votes of 39 to 1, yet faced widely different votes in the House. This phenomena would support the view that the committee vote serves as a cue to legislators voting on the floor.

This re-enforces the power which the committees were viewed to have by a majority of persons interviewed for this research. Relative to committee power, when asked what options a legislator had if a committee acted unfavorably on his bill, nine of the persons interviewed mentioned the strategy of attaching it to a germane bill on the floor. Only four, however, said this strategy works if accompanied by considerable work behind the scenes. They also mentioned that, to successfully attach an amendment to a bill, requires the permission of the patron of the bill. The attempt by Senator Marye to circumvent the committee by amending a floor bill was an illustration of the difficulty such a maneuver faces. While this is the only case in this study where a floor amendment to gain legislation turned down by a committee was

attempted, the strength of the committee system in the General Assembly works against floor amendments.

#### Clout of Key Legislators

This case shows mixed results regarding the clout of the patron. Senate Bill 160 was patroned by Senators DuVal, Gartlan, and Waddell who had effectiveness ratings<sup>207</sup> of nine, five, and twenty-three, respectively. In addition, Senator DuVal and Senator Waddell are among the most senior members of the Senate Committee on Agriculture, Conservation, and Natural Resources, and Senator Waddell is the fourth most senior member of the Senate Committee on Local Government. Because of their perceived clout (effectiveness rating) and expertise (presence on committees dealing with solid waste and recycling issues) these senators would be looked to for cues on how to vote by senators uncertain of the recycling and solid waste issues. A bill patroned by these three senators would be regarded as a sound one. The vote for their bill on the uncontested calendar of the Senate supports this view.

By contrast, House Bill 572 included as co-patrons Delegate Quillen and Senator Walker who had effectiveness ratings of twelve and four, respectively. Yet this bill was significantly altered prior to its passage and, given that it was passed one day before the end of the session, appeared to be in danger of not passing that session. The apparent reason for this difference from Senate Bill 160, is that, while Delegate Maxwell (D-Newport News) and Delegate Abbitt (D-Appomatox)--co-patrons of House Bill 572--served on the House Committee on Conservation

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<sup>207</sup> Edds, "Rating Virginia's Legislators," 2.



and Natural Resources, they were not senior members of the committee and none of the patrons served on the House Committee on Counties, Cities, and Towns, the Senate Committee on Agriculture, Conservation and Natural Resources, or the Senate Committee on Local Government. This meant that none of the bill's patrons were able to guide the bill through committee and they may not have been consulted by other legislators seeking guidance on the technical issues of the bill.

There are two examples in this case of compromises being struck to enable passage of a bill. The first of these examples was House Bill 572, which the patron saved from possible defeat at the end of the session by urging support of the Senate amendments when the Senate refused to withdraw its amendments. This action on the part of the patron led to House acceptance of the Senate amendments and subsequent enactment of the bill. While the Senate version was certainly a much weaker version of the bill than the patron or co-patrons had envisioned, the compromise: (1) Allowed some positive action to be taken on local solid waste management plans; and (2) Established a base which could be built upon in future legislative sessions. As Ripley and Franklin<sup>208</sup> found, "Lack of compromise almost always means lack of legislation." The second compromise, while not articulated in the records of the General Assembly, appears to have been agreed upon between the 1988 and 1989 sessions as a response to the solid waste management plan issue. The large number of co-patrons for the 1989 bills relating to local or regional solid waste management plans indicate that there was clearly

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<sup>208</sup> Ripley and Franklin, Policy Implementation and Bureaucracy, 21.

support for strengthening the legislation passed in 1988. Given that the two bills introduced in 1989 were almost identical in their provisions, it is equally clear that a significant number of legislators had agreed that the means to require the needed plans was through regulation, rather than statute. This agreement to focus on the larger picture was quite successful from a legislative perspective<sup>209</sup> as it met the public policy goal of requiring solid waste management plans of all local or regional agencies and did so with a minimum of dissent and within one legislative session.

The floor maneuvers surrounding House Bill 572 provide an illustration of the power of the agenda setter who, in this instance, was the President of the Senate. In a floor maneuver, Senator Marye offered an amendment which would have added a provision for beverage container recycling to a bill dealing with recycling plans. The President ruled that it was not germane to the bill and, therefore, was out of order. While there are issues which clearly are not germane to recycling plans, an argument could be made that beverage container recycling is germane. The President saw the case otherwise and was sustained by the Senate on a challenge from Senator Marye. Had the President ruled for Senator Marye's amendment, it is doubtful the Senate would have overridden him.

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<sup>209</sup> From the perspective of local government, the regulatory route may not be the preferred choice because: (1) The requirements on the localities are more likely to be enacted; (2) Regulatory processes are less subject to lobbying pressure than legislative processes because regulators are not elected; and (3) The regulatory process is often difficult to access and has limited appeal options.

### Number of Co-Patrons

This case provides an unclear picture of the importance of a large number of co-patrons in the passage of a bill. While House Bill 1743, with its 33 co-patrons, passed by a unanimous vote in the House and a 39 to 1 vote in the Senate, Senate Bill 160, with three co-patrons, also passed, albeit with less of a majority.

This phenomena may be a case of legislators voting in informal blocs, based on friendships and mutual trust. When persons interviewed in this research were asked if some legislators voted for certain bills in exchange for support of their bills, seven of 16 respondents said this does occur, but not to the same extent as in national politics, and not if the vote is a matter of conscience for the legislator. Six mentioned that it is often done less as a conscious vote-trading strategy, than as a favor among friends. This could explain strong support for an issue, absent large numbers of co-patrons, strong constituency support, or other strong sources of cues for voting.

### Legislative Schedules

The last minute acceptance of the compromise bill on recycling was clearly a result of the legislative schedule. With the session down to the final hours, the Senate, having refused to yield on its amendments to the bill, requested a conference committee. Given the small probability that a conference committee could work out a compromise prior to adjournment, the bill's patron, Delegate Quillen suggested the House accept the bill as amended. This allowed passage of a weakened version of the bill. Had the session adjournment not been so close, a

conference committee might have been able to work out a compromise which would have been stronger than the bill which was passed. The session length precluded that option.

#### Precedent Setting

This legislation was precedent setting in its field (solid waste management) but was not precedent setting in the environmental arena, generally. The imposition of goals to be obtained and the provision of authority to reach such goals were ideas borrowed from the federal implementation of clean air and water standards. As such, the issues regarding constitutional rights of individuals which hampered passage of some other environmental issues discussed above were not a factor in this case.

#### Nature of the Legislation

##### Regulatory Legislation

This legislation was regulatory in nature, both in the requirements placed on local governments for solid waste management, and in its provision of authority for local governments to impose recycling regulations on local citizens. While regulation without strong public support often finds few friends among legislators, this issue was of such importance that it passed, regardless of its regulatory nature.

One interesting facet of this case was the way in which potentially divisive regulatory detail was handled. That is, it was removed from the scope of the legislation and left to be worked out by the Board of Waste Management.

While the similarity in approaches using the regulatory route seems to support the idea that legislators worked out a compromise, the possibility that the business interest groups pushed for the regulatory alternative cannot be excluded. Jones<sup>210</sup> found that when business or industry did not wish to publicly lobby against a popular environmental bill due to public relations considerations, they often proposed general legislative language with details to be worked out through the regulatory process, which they then influenced away from any media attention.

#### Service Provision

The management of solid waste and recycling is not a service to any constituency group and was not presented as such. It was, simply, a means to address a critical and growing problem which affected the entire state.

In summarizing this case, there remains some ambivalence as to how well the findings of this case conform to the factors identified as affecting legislative outcomes. It is clear that the completion of an accessible study report assisted in passage of a number of legislative initiatives. While clout of a patron helped pass some bills, lack of key patrons on committees considering a bill hampered passage of other bills. Compromise was a key to enacting legislation in a timely manner. And lastly, the notion that the "time was right" for the recycling and solid waste management issues cannot be underestimated.

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<sup>210</sup> Charles O. Jones, "Regulating the Environment," In Politics in the American States: A Comparative Analysis, 3rd ed., ed. Herbert Jacob and Kenneth N. Vines (Boston: Little, Brown and Company, 1976) 402.

Case Study Summary

The ten case studies and the factors affecting the outcome of each are displayed in Table 4. An expected outcome is shown, based on the importance of each identified factor in the individual cases. The expected outcomes are consistent with what the outcomes actually were in each case. This served to disprove the null hypothesis that there are not factors which can be used to predict the outcome of legislative issues in the Virginia General Assembly. The literature on the legislative process and the findings from the interviews conducted as a part of this research support the discarding of the null hypothesis as unfounded. What conclusions can generally be drawn regarding the legislative process in the Virginia General Assembly, and how this research supports the literature on legislative process is taken up in Chapter 5.

TABLE 4  
SUMMARY OF CASE STUDY FINDINGS

ISSUE	Environmental Factors Perceived Election Availability Schedule of studies/ to Public Information	Political Factors Governor Support of Environmentalists	Developer Party Support	Institutional Factors Committee Patron Clout Support	Legislative Session Schedule	Precedent setting	Nature of Bill Regulatory Service In nature Oriented	Expected Outcome of Bill
Ban on Phosphates	+	+	0	+	0	+	-	Passage
Erosion & sediment control penalties	+	+	0	+	0	-	0	Might pass
Ban on mining/milling of uranium	-	0	0	0	0	+	-	Failure
Tree Protection	+	+	+	+	0	+	-	Might pass
Stop work orders for Wetlands	0	0	0	0	0	-	-	Failure
Back Bay/North Landing Preservation	+	0	0	0	0	0	0	Passage
Transferable Development rights	-	0	-	+	0	+	-	Failure
Amendments to Ches. Bay Preservation Act	-	-	+	0	0	-	0	Failure
Non-tidal Wetlands	0	+	-	+	0	+	-	Failure
Recycling Objectives	+	+	0	+	0	-	-	Passage

+ Positive affect on outcome    0 Not an issue in outcome    - Negative affect on outcome

## CHAPTER 5

### FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

The purpose of this study is to examine how urban areas in the Hampton Roads and other areas of Virginia access the legislative process of the Virginia General Assembly in order to impact legislative initiatives relative to state-local programs, local assistance, and local authority. This inquiry is addressed through:

1. Case studies of specific issues presented in the legislative proposals of six cities in the Hampton Roads area to determine whether these issues received favorable legislative action and to inquire as to what factors contribute to successes or failures.

2. Interviews with key legislative actors and observers to gain their views as to what factors contribute to the success or failure of a legislative initiative.

Through examination of these two types of data, conclusions are drawn regarding the legislative process relative to the literature on the legislative process and, in keeping with the urban problem-solving focus of this study, recommendations are made for elected or other governmental actors in the urban environment to address legislative outcomes in dealing with their state legislatures.

Table 4, "Summary of Case Findings" (Chapter 4) shows the expected outcomes of the legislative issues under study as predicted by



the various factors which impact the outcome of the legislative process surrounding each case. Table 5 compares those predicted outcomes with the actual outcomes of the case studies. As the table shows, the outcomes as predicted by the effect of the factors studied agree with the actual outcomes of the cases. While some legislation which was predicted to pass was weakened in its final form (e.g., ban on phosphates), the lack of action in later legislative sessions is an indicator that those who requested the legislation accepted the weaker version. However, there is also evidence that some factors are more important than others and that a tool based on weighted values of the factors can provide a strong predictive capability.

What is clear is that there are factors which can be used to predict the outcomes of legislative proposal items of local governments in Virginia. This is consistent with the literature on the legislative process which has found through numerous studies that specific and identifiable factors do affect legislative outcomes. In keeping with the focus of this research on urban problem solutions, the findings of this research are discussed relative to how they inform the ability of local government actors to pursue state legislative initiatives. Conclusions are drawn as to how the Virginia example relates to the literature and what the findings say about the legislative process in the Virginia General Assembly specifically as it impacts urban legislative needs. Recommendations are made both for possible action by urban policy actors and for further research.

TABLE 5  
 COMPARISON OF PREDICTED AND ACTUAL RESULTS  
 OF THE CASES UNDER STUDY

Issue	Predicted Outcome	Actual Outcome
Ban on Phosphates	Passage	Passed with numerous exclusions
Erosion & sediment control penalties	Might pass	Passed with reduced penalties
Ban on Mining and Milling of Uranium	Failure	No action taken by delegation
Tree Protection	Might pass	Passed in 1989 with desired authority for certain localities; weakened in 1990
Stop Work Orders for wetlands	Failure	No action taken by delegation
Back Bay/North Landing preservation	Passage	Funding approved in 1989 session
Transferable Development Rights	Failure	Authority not granted
Amendments to Chesapeake Bay Preservation Act	Failure	Schedule concerns addressed through administrative action: all other amendment action failed
Non-tidal wetlands	Failure	No action; study underway. "No action" fulfilled intent of items in legislative proposals.
Recycling objectives: state wide	Passage	Some recycling authority was granted localities but was weakened and did not include the desired state-wide plan

### Findings

The findings generally support the literature on the legislative process and serve to: (1) Add to the evidence in support of general findings on the legislative process; (2) Corroborate that such findings are applicable to the Virginia General Assembly; (3) Document some of the informal and unarticulated wisdom surrounding the workings of the General Assembly; and (4) Provide an accessible source of information to urban policy actors and other persons interested in improving their understanding of the legislative process in the General Assembly.

### Environmental Factors

#### Saliency of the Issue

When asked what criteria a legislator uses in deciding which bills to sponsor, those interviewed said that they based the decision predominantly on the merit of the bill, the support which the bill was perceived to have among various constituent groups (of which local governments were considered one among others), and whether the bill was good for the constituency. Also mentioned was the practice of having a member of a local delegation patron bills in his or her area of expertise or interest.

The criteria of merit or what is best for the constituency are often those which give rise to differences of opinions between legislators and city policy makers. Legislators will not introduce bills which they feel the constituency does not want or which would be

detrimental.<sup>211</sup> The case of transferrable development rights failed because no legislator wished to introduce the bill because of its perceived lack of merit or desirability. However, this criteria can work in favor of a concept. In the case of the ban on phosphates which, though business lobbied strongly against it, legislators voted for it because of its merit.

The literature on state legislators finds that most state elected officials feel they are genuinely representing the interests of their constituency. However, the case studies do not provide a clear perception of this because it cannot be assumed that the legislative proposals of local governments reflect the wishes of the constituency. Absent this correlation, the success of items in the legislative proposals cannot be used as an indicator of how well legislators fulfill the constituency's wishes.

When asked how they characterized their role, a large number of legislators said they did what their constituency wanted or did so at least in those cases where the will of the constituency was clear. Several said that the transience of the population in Hampton Roads makes it difficult to know one's constituency and that polls were not representative because only the dissatisfied respond. Those who answered in this manner said they did what they thought was best for all the citizens or they voted their consciences.

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<sup>211</sup> An example of this was the Chesapeake delegation's refusal to patron a sales tax increase requested by the city. Tony Wharton "Forget sales tax increase, legislators tell city," Norfolk Virginian-Pilot, 6 January 1991, sec. The Clipper, 5.

### Studies and Information

When asked whether studies of an issue helped with the passage of legislation relating to the issue, most responded in the positive and gave as the reason that the study improved their understanding of complex issues and made them more comfortable acting on bills related to the study. They also mentioned looking at the experiences of other states in determining whether and in what manner Virginia should implement new initiatives. The case studies generally support this view although transferrable development rights did not gain passage, despite completion of a study and the existence of a similar program in other states.

Another source of information for legislators, the legislative proposals of various interest groups such as local governments, are not addressed in the literature. The question as to the most effective means to present local government legislative initiatives in the case study data is limited to determining why issues in the proposals were not patroned by any local legislators. In the case of the ban on mining and milling of uranium, there seemed to be a lack of understanding of the interest which this ban would have for the constituencies in Hampton Roads since the proposed mining was to take place hundreds of miles from Hampton Roads. The issue of possible contamination of the water supply was not mentioned in the legislative proposals. In the case of stop work orders, reasons for lack of legislative action are less clear but the listing of the issue as one of 32 legislative requests may have caused legislators to rely on other members of the General Assembly to introduce that legislation. These findings are supplemented by the

interview responses in which six persons specifically said shorter proposals are better, one said long lists aren't realistic, and three said long lists should be reinforced with meetings between legislators and local policy makers.

#### Legislative Elections

Literature and experience has found that some issues are acted upon or deferred in the face of an upcoming legislative election. Action on one case study--that of tree protection--could have been partially attributable to this cause. Those interviewed agreed that issues can be affected by up-coming elections although several noted that with elections every two years, it is probably not an important determinant of outcomes in the House of Delegates.

#### Political Factors

##### Support of the Governor

The findings of both the interviews and the case study support the findings in the literature that the support of the chief executive for a legislative initiative will assist its passage. It does not, however, guarantee it as the case of the wetlands regulations showed (Governor Baliles dropped it from his legislative agenda after it was carried over one session). These cases present no evidence of the governor's ability to kill a bill by his negative action.

### Interest Group Support and Opposition

Interest groups, including traditional lobbies, citizen groups, and local governments and their state-wide associations, played a large role in many of the issues under study. As would be expected in environmental legislation, business, real estate developers and industry usually led the opposition while environmental groups and citizen groups led the support. The position of local governments varied with the issue (e.g., they supported a phosphate ban, but opposed wetlands regulations). These findings are consistent with the literature and with the findings of the interviews.

What is less certain is the importance of numerous interest groups speaking to the issue. Several researchers found that five or more groups speaking for a bill assisted its passage. Few of the cases in this study had as many as five groups speaking to an item so this can not be tested conclusively. While some persons interviewed felt that this was true, an equal number felt that the breadth of constituencies represented by the groups was more important. The case study results are ambivalent regarding the proposition that a bill is more likely to be postponed or carried over if no interest groups speak for or against it. However, among persons interviewed, eight said this was true while seven said it wasn't necessarily true and depended on the nature of the issue itself. Those in the latter category cited as an example routine code changes which are passed with no support from interest groups.

### Party Support

The literature finds that the support of political party leaders and the subsequent party support are factors which improve the chances of a bill being passed. The responses to the interview question strongly indicate that this was the case, especially with Democratic party support in the Virginia General Assembly since it is the dominant party in both houses. Several persons interviewed noted that the Republicans had enough strength in the House to kill a bill by forming an alliance with some Democrats. This alliance could not, however, gain passage of bills.

The cases under study did not present enough evidence of party voting to fully assess this issue. It is of note that several of the bills passed although the Speaker of the House--the chief Democrat--voted against them, and several bills had an equal number of Democrats and Republicans voting both for and against the bill.

### Voting Strategies

There has been extensive research done on the issue of strategic voting wherein a legislator casts a vote on some criteria other than his best judgement and conscience. The patterns of voting examined in the case studies do not indicate that this was prevalent in the General Assembly and a question posed in the interviews concurred that, while a legislator might vote to support a friend's bill, it was done more often out of friendship or in exchange for a favor rendered.



### Institutional Factors

#### Committee Support

On this issue, there is no divergence among the case studies, the interview results, and the literature. The committees are the gates through which all bills must pass to get to the floor of both chambers. Committees also wield influence through the ability to alter bills. Austin<sup>212</sup> found that less than five percent of bills which committees of the General Assembly reported to the floor were killed. Yet in an average session, 800 bills are enacted of 2,000 proposed, meaning that committees must screen out over 1,100 bills.

Although few studies have been done on state legislature subcommittees, the findings from the U.S. Congress indicate that the committees are relying increasingly on subcommittees. While there is not archival data on subcommittee action in the General Assembly, review of calendars and referrals indicate that the dependence on subcommittees is increasing. Several persons interviewed mentioned the emerging power of the subcommittees as the new focus of legislative action.

A third issue raised in this study for which limited data were found in the literature is the issue of split committee votes. Both the case study results and the interview results indicate that an issue on which the committee is badly divided is more likely to have difficulty on the floor.

The findings in the literature indicate that committees with large workloads screen out more bills and that some committees command more respect and are thus more likely to have their bills pass. These

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<sup>212</sup> Austin, "The Virginia General Assembly," 95.

premises are supported by the interview responses but cannot be adequately addressed with the limited number of cases under study. In addition, the proposition that staff support affects the number of bills a committee reports is not borne out by the interview results, possibly because committee staffing in the General Assembly is tied to committee workloads.

#### Clout of Key Legislators

While the literature and interview responses indicate that the clout of a patron, as measured by position, seniority, and stature among peers, is an important factor in the outcome of a bill, the cases under study are not as conclusive. Among the cases, bills patroned by members with clout passed unless the bill had strong interest group opposition. In those cases, the bill either was carried over or was significantly amended. From this it can be inferred that clout saved the issue from being killed but could not totally overcome other factors affecting legislative outcomes.

An additional role which key legislators serve is that of negotiators of compromise. In a bill which is strongly opposed, the sponsor needs to decide if settling for less might be more acceptable than nothing. Several of the cases under study, such as the phosphate ban and the recycling bill, were passed after significant compromise took place. In both cases, it was apparent that the patron sought compromise so that some action could be achieved on the issue during that legislative session.

Both the case studies and the interviews support the literature in saying that key legislators can affect the outcome of a bill by controlling the scheduling and handling of the bill and by controlling debate and floor maneuvers. It is of note that there appears to be as much or more influence by committee chairmen as by floor leaders. Agenda setters are identified as the Speaker of the House, the President pro tem of the Senate, and committee chairmen. The Speaker of the House has more power as an agenda setter than does the President pro tem because of differences in the rules of the two chambers. Rulings on germaneness, scheduling debates, and deciding referrals are the key sources of power. The committee chairs have much the same power except that they can defer handling bills until there is no chance of them being considered in the session due to the time constraints. This serves to enhance the power of the committee chairs in their role as agenda setters.

#### Number of Co-Patrons

The literature and the interview results indicate that a larger number of co-patrons increases the likelihood of a bill's passage. Several persons interviewed qualified their answer by saying it depended upon whom the co-patrons were. These findings are borne out in the case studies. Larger numbers of co-patrons correlated strongly with both the passage of a bill and the margin of passage. There are, however, cases with few co-patrons which passed, albeit with less of a margin.

Two bills with substantial numbers of co-patrons which had difficulty in passage had co-patrons from only one or two localities,

instead of representatives from a wider area and had many delegates as co-patrons but few senators. One had a close floor vote due to the lack of broad based support and the other almost failed in the Senate for lack of senators to support it.

#### Legislative Schedules

The literature indicates that time constraints in legislative floor action or committee action tend to cause legislative items to be screened out or deferred, if controversial. The findings of the case studies support this, particularly in terms of bills being carried forward to the next session when further consideration was deemed necessary. This occurred in the ban on phosphates, the tree protection bill, and erosion and sediment control penalties. It is of note, however, that the legislators and staff interviewed did not feel that the session length created problems in the handling of bills. As an example, several people cited the House Committee on Courts of Justice which has a large workload and schedules night meetings to address the load, if needed.

#### Precedent Setting

Virginia has a reputation as being legislatively conservative. Legislators interviewed confirmed this in characterizing themselves as protectors of the citizens from overbearing local authority, protectors of property rights, and as persons elected to not move precipitously into unproven areas when it might cause harm to the constituency. This is supported by findings in the tree protection and the transferrable

development rights cases in which property rights were a major issue in the proposed legislation.

When asked if bills with a narrower scope of power or impact were more likely to pass, the persons interviewed were less than unanimous. A large number felt this was true because it limited precedents. Such a bill can start a new initiative gradually, and it can, in the words of one person interviewed "help keep the code tight." These issues can cut across each other as occurred in the tree protection legislation. In that instance, individual cities wanted grants of power only for themselves and were denied this because of the precedent which might be set. The bill which ultimately passed was broader than those requested in its inclusion of a large number of local governments but it severely limited any local option to change the guidelines.

#### Nature of the Legislation

##### Regulatory Legislation

The literature indicates that legislation that distributes benefits is more likely to pass than regulatory legislation. The one exception cited were those bills in which the intent was primarily self-regulation of a particular group. The case studies support this finding in that cases such as the recycling initiative and the non-tidal wetland issue, which would have imposed significant new regulations on constituent groups, caused conflict and were amended or never enacted. Erosion and sediment control penalties--which added no new regulatory authority--and the ban on phosphates--which was enacted as a consumer self-regulatory measure--were approved. These findings support the

literature and the interview results in which several persons cited regulatory issues as those which cause controversy. .

Of interest to local governments and other interest groups is the regulatory activity which occurs through the administrative process as authorized by general enabling legislation. Ripley and Franklin<sup>213</sup> found that interest group activity does not cease after legislation is enacted and that interest groups attempt to influence implementation decisions in ways favorable to their interests. This was demonstrated in the recycling case in this research where much of the implementation detail was left to regulatory activity rather than being addressed in the legislation thus leading to regulations which substantially exempted business and industry from recycling objectives. Local governments themselves act as the interest groups seeking to impact the regulatory process when in order to expand their authority beyond that expressly provided in enabling legislation. This occurred with the tree protection legislation when localities attempted to strengthen state requirements with local regulations, and in the stop work order legislation where localities sought to increase local regulatory flexibility.

Given the importance of the regulatory issues to local governments, both in terms of authority granted for local control of activities and in terms of mandates placed on local governments to meet certain regulations, it is critical for local governments to monitor the regulatory process and, as it relates to regulation, to review the language of proposed legislation to ensure that it will not create regulations which are a burden on local governments. The local governments

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<sup>213</sup> Ripley and Franklin, Policy Implementation and Bureaucracy, 14.

were addressing this type of concern with attempts to change implementation schedules and to require state funding for the Chesapeake Bay Act.

#### Service Provision

The literature indicates that distributive policies which provide services to a large constituency are enacted with relative ease and limited controversy. The Back Bay preservation issue is a service issue and passed with relative ease in the second year it was proposed. Other issues, such as the erosion and sediment control penalties, which could be construed as service to local governments, also passed with relative ease. While the cases provide limited examples, several persons interviewed indicated that bills providing service to a constituency are more likely to be introduced and enacted.

ConclusionsEnvironmental Factors

## Saliency of the Issue

The findings on content support the literature which indicate that state legislators vote in a manner which they feel is best for their constituencies. One difference that several authors noted was that legislators sometimes introduce items which they might not support but which were a special request of an interest group. While this may occur in Virginia, none of the cases under study support this and it is not an item mentioned in responses on the interviews. One possible explanation for this variance from findings in other states could be that the limited sessions of the Virginia General Assembly may discourage members from introducing bills which they feel lack merit or have no reasonable chance of passage.

This is not to imply that Virginia legislators only patron "winning" bills. They will support bills with a wide base of support even if the bill may not agree with their personal philosophies or that has little chance of passage. The state lottery bill and the beverage container deposit issues are two which faced tremendous odds but were introduced many times by legislators who felt that the constituency wanted such legislation. The key is that the support is broad based, not a single interest group. Further affecting this is the phenomena that public interest in specific legislative areas changes over time. An awareness of these cycles can help position policy actors when proposing legislation.



The finding that legislators introduce bills in their areas of interest or expertise is consistent with the findings in other states. This trend is expected to continue given the increasing need for specialization due to the complexity of issues coming before legislatures (e.g., impacts of state industrial activities on global warming; the definition of when life starts).

One could be cynical regarding possible motives underlying the interview responses which indicates that politicians--General Assembly members--act on their constituency's wishes or, when in doubt, vote for what is best for the most people as conscience dictates. Media accounts of some of the retaliatory actions which occur between legislators on different sides of an issue on the General Assembly floor support such cynicism. However, as one person interviewed put it, members of the General Assembly are citizen legislators who must live and work among their constituency for most of the year and have no staff to insulate them from the people; they will be held accountable if they do not do the constituency's will.

Despite this justified concern over "living with the constituency" expressed by several persons interviewed, the 1991 legislative redistricting created districts in the Hampton Roads area of such size that the concept of living among one's constituency is lost in several of the new districts. Some of the redistricting was unavoidable in light of federal voting rights requirements. However, the extent to which city and community lines were ignored indicates either a concern more for preserving certain incumbents' seats than for constituent communities or an intentional effort to dilute local government legislative clout by

creating inter-jurisdictional legislative districts which would not have close ties to any local governing body. Whatever the rationale for the districts, the primary motivation does not appear to have been the constituency as represented by the average citizen who, with the new districts, appears to have less access to state legislators than before.

#### Studies and Information

Both the case studies and the interview responses support the proposition that completion of a study on a specific issue or availability of experiential data from other states will improve the likelihood of a bill's passage. While there are cases where a study is ordered simply to delay action on a bill, in most cases the study improves legislators' level of comfort with an issue and enables them to decide what action to take regarding an issue. Complex or controversial issues for which limited information is available are more likely to be postponed or fail.

In the opinion of those interviewed, short legislative proposals, with good background data to support them, are more useful to legislators and thus more likely to meet with success. The two case studies in which the requested issues were not introduced either lacked appropriate supporting information or were part of a longer list. The case study findings relative to the length of the list should not be interpreted to mean that long lists doom issues because the same long legislative proposals containing the failed issues also had issues which succeeded.

Emphasis, rather, should be placed on the use of rank ordering of issues, either in the written proposal or in meetings with the local legislators and city policy makers. Several legislators recalled issues which had been discussed in such legislative agenda meetings and those interviewed indicated that they found these meetings useful.

#### Legislative Elections

An up-coming legislative election can affect an item's passage. Specifically, bills which a cross section of citizens favor will probably pass by wide margins and no tax initiatives will pass.

#### Political Factors

##### Support of the Governor

On those issues to which the governor is highly committed (e.g., Chesapeake Bay Preservation) passage is much more likely due to the considerable media attention he can bring to the issue, the pressure he can bring to bear on individual legislators, and his ability to marshal executive staff to research and lobby for an issue. The strength of the governor in Virginia is re-enforced by the part time nature of the legislature and by his power of line-item veto and executive amendment. The power of the governor is limited by the personality of the incumbent and by the proscription that he cannot succeed himself in office. Absent a constitutional amendment to strengthen the General Assembly, the considerable influence of the governor over the legislative process is not likely to change.

### Interest Group Support and Opposition

Interest groups play an important role in the outcome of bills, both through opposition and support of the bills. Legislators see interest groups as providing valuable expert testimony and as representing some subset of the constituency. None of the persons interviewed felt that members of the General Assembly allowed interest groups to influence their decision making outside of these roles of information providers and representatives. The votes examined in this research tend to support that observation but the power of the role as information providers was apparent in the amendment and delay which occurred on various issues.

### Party Support

The Democratic party, while strong in Virginia, has several groupings within it which tend to support or oppose issues as a group. This phenomena may explain why legislators, when asked, perceived the role of party leadership as important in passage of a bill, yet the case studies do not clearly indicate this. The importance of party leadership can be expected to shift as the suburban areas become a stronger force in the state and send more legislators to the General Assembly. This can be expected because suburban voters tend to vote for Republican candidates, thus the growth of the suburbs will strengthen the Republican Party's representation in the General Assembly.

Another confounding issue in studying party support in the General Assembly is that the party leadership among the Democrats has tremendous seniority, considerable clout and experience. As such, it is very

difficult to separate the issue of party leadership from clout. What is clear is that the perception of the power of party leadership is high and the impact of such perceptions can affect legislative outcomes by encouraging undecided party members to support a strong leader.

#### Voting Strategies

Strategic voting in the General Assembly is limited to voting for friend's issues and repaying favors. Even in these cases, there is a sense that such favors are not given if it is contrary to the legislator's dictates of conscience.

#### Institutional Factors

##### Committee Support

In a survey of state legislators throughout the United States, Francis and Riddlesperger<sup>214</sup> found that in enumerating the total number of legislators considering committees as the most critical decision point, Virginia ranked among the top five states. The importance of the committee deliberation on a bill cannot be understated as regards the Virginia General Assembly. In fact, the floor vote has been characterized by one legislative observer as a post mortem of a bill--simply confirming the committee's assessment of the viability of the bill.

While the workload and the prestige of the committee have some impact on how many bills are reported to the floor, the sense is that the "good" bills were reported out. Clearly, the critical activity for

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<sup>214</sup> Wayne L. Francis and James Riddlesperger, "U.S. State Legislative Committees: Structure, Procedural Efficiency, and Party Control," Legislative Studies Quarterly 7 (November 1982): 457.

those wishing to influence legislative outcomes is convincing the appropriate House and Senate committee of the merit of the bill. It is also apparent that convincing a simple majority is not enough as a close vote in committee may doom the bill on the floor.

#### Clout of Key Legislators

The clout of the patron can improve a bill's likelihood of passage, particularly if the patron is a legislator who is considered an expert on the issue being considered. However, other factors can dilute the effect of the clout of the patron and can cause delay or weakening of the bill.

In some cases, compromise can save a bill if there is a high level of opposition. Given the time constraints of the General Assembly session, the bill's patron or supporters need to take the initiative on seeking compromise if the bill is to be saved.

Key legislators who set agendas in the Virginia General Assembly generally possess powers which can impact the passage of a bill. The rules of referral, germaneness, and floor actions limit this power so that it does not approach that of Congress or other states with less strict rules for bill consideration. However, the few rules under which committees operate coupled with the considerable power of the committee system in the General Assembly provide significant power to the committee agenda setters.

### Number of Co-Patrons

The number of co-patrons clearly affects the outcome of a bill in a positive way. More co-patrons increases a bill's likelihood of passage, however fewer co-patrons does not necessarily ensure failure. The breadth of support represented among the co-patrons also affects the importance of this factor in that a cross section of delegates and senators as co-patrons can bring other members with them on the vote to a degree a narrower representation cannot.

### Legislative Schedules

Session limitations do constrain the time available to consider bills and result in the postponement or screening out of bills. While several persons interviewed said that only the bills which are bad ideas or "backbenchers" (junior members) bills are screened out, the findings indicate that controversial and complex bills are often carried over to another session for further consideration.

### Precedent Setting

Members of the General Assembly regard Dillon's Rule as an important basis for intergovernmental relations in Virginia and see themselves as conservators of powers bestowed on governments by the people. As such, the legislators are cautious in breaking new ground or infringing on individual property rights. Legislation which might have the potential to have either of these impacts will face close scrutiny, study, and probable amendment before passage is considered.

### Nature of the Legislation

#### Regulatory Legislation

Regulatory bills are characterized as more controversial and therefore less likely to pass. However, while strong lobby action often delays or weakens regulatory initiatives in Virginia, regulation which is supported by the public or is considered of merit to the legislators will generally pass.

If local governments and other interest groups can anticipate the magnitude of the impact of regulatory legislation prior to enactment of the legislation, language to address some of the implementation concerns might be broadened to allow more flexibility in the regulations. Pro-active action in the development of regulations is easier than seeking relief after regulations are in place.

#### Service Provision

In that service to constituency is a concern for elected officials, legislative initiatives which provide service to a group will pass with relative ease provided that the service is viewed as equitably distributed and does not take from one constituency to give to another. This last factor can often be a point of controversy for environmental issues in which the public good might be served in enhanced environmental quality but is achieved at the expense of developers or other interested groups.



### Recommendations

Recommendations are limited to those which reflect one of the two purposes of this research:

1. To contribute to the research regarding the legislative process in the states; and
2. To identify those factors which impact the passage or failure of legislative items proposed by cities in Virginia to the General Assembly.

As such, problems noted in the course of this research relative to obtaining information on the General Assembly and problems in the legislative process which impact localities do not have recommendations made in this research. The focus is retained on: (1) What additional research might arise from this study; and (2) What might be done by local policy actors to influence the outcome of their legislative proposals before the General Assembly.

### Environmental Factors

#### Saliency of the Issue

The conclusions drawn concerning content and scope of legislative initiatives have limited application for local policy makers except to point out that some initiatives are not going to be sponsored and enacted into law simply because legislators do not think the item is a good idea. There are several pro-active responses which can be made to address this situation as follows:

1. If there is strong constituency support for a legislative item, it is critical that the local government provide that information

to the legislators. The legislators interviewed were quite clear that they were elected to represent the people, not local governments, and it should be shown that the local government initiative is seeking the interest of the people.

2. For initiatives which are in the best interest of the constituency but lack any visible supporters and hence lack legislative delegation support, local policy makers should seek coalitions among municipalities with similar interests which might have local legislators more sympathetic to a particular issue.

3. In that legislators introduce bills in their area of interest or expertise, local policy makers should attempt to cultivate legislators' interest in areas of critical importance to the locality. In at least one city under study, the delegation had only one legislator with any interest in environmental issues, making action on environmental initiatives difficult to achieve.

Regarding Item 1--the perception of constituency service--an additional point needs to be raised. There is a sense among both local government elected officials and among state legislators that they are the keepers of the "sacred flame" of citizen interest. The citizens might be better served if state and local officials focused on working together to meet citizen needs. While there is cooperation among some state and local officials, this is not universal in the Hampton Roads area nor across the state. As a consequence, local and state elected officials often work at cross purposes in pursuing state legislative initiatives with the losers being their constituencies. The constituencies are expressing their lack of tolerance of this through a general

anti-incumbent sentiment which has led to the unseating of state legislators and local council and board members with considerable seniority. Given the current economic climate, citizens are not interested in which set of elected officials purports to represent them the best; rather, they are interested in which set of officials gets things done to make a difference in the citizens' lives.

What local government officials can do to improve relations with state legislators is somewhat limited by the willingness of state legislators to participate in meaningful dialogue. Exacerbating this problem is the difference in background of local leadership and state legislators. Local leaders are often community leaders who rose to elected office on experience and support built through business relationships, civic organizations, or membership on local boards (e.g., school boards, planning commissions). State legislators, on the other hand, often are lawyers who established relationships through professional or political groups. As such, these two sets of actors have different perspectives on citizen needs and interests and may have limited informal opportunities to interact and broaden their perspectives.

One strategy which can assist in this manner is the provision of more opportunities for interaction among state and local elected officials. While meetings are often set up by local officials when they need support from state legislators, there appears to be limited opportunity for informal meetings for local officials to hear the legislators' perspective on issues of local interest. In addition, the schedules of both local elected officials and legislators often leaves

mayors or chairmen of boards as the primary representative in meetings with state officials. This limits the communication which could occur between other members of local boards and councils and legislators outside formal briefings. While this cannot be a panacea for local legislative issues, it can serve to allow the two groups of elected officials to focus on what issues they can agree upon which are of importance to the constituency.

#### Studies and Information

Inasmuch as one source of information for legislators is legislative proposals, efforts should be made to make these documents more useful to the intended audience. Shorter lists or lists which have priority ranked the legislative items should be used by local governments in presenting their needs to the local legislative delegations. While no set number of issues is recommended for a proposal,<sup>215</sup> the number of items proposed should: (1) Be realistic, given the number of members in the delegation, and (2) Be of such a number that city staff and policy makers can follow the bills through the legislature and give needed input, by means of additional data or testimony, as required. These lists should be supported with background data regarding the need for the legislative item and the impact the issue has on the constituency. In keeping with comments made regarding lobbyists, it would also be useful to mention possible obstacles or opposition to each legislative

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<sup>215</sup> The Virginia Citizens Consumer Council recommended limiting legislative proposals to three to four, but this restriction was aimed at citizen groups who lacked resources to pursue more issues. Virginia Citizens Consumer Council, Inc, Action/Inaction: A Guide to the Virginia Legislature, (n.p., 1973), 56.

item so that the members of the General Assembly understand fully the implications of the issue prior to its introduction.

These proposals should be supplemented by meetings with legislators to briefly explain each issue and answer any questions. Given the limited research staff available to General Assembly members, any studies which local governments have done relative to the issue should be made available to the legislators. This should be done well before a legislative session so there is time to review the research prior to the crush of the session.

The constraints under which the General Assembly members work should also be shared with key members of local government bureaucracies so that they understand the need for advanced planning and research on legislative issues of interest to their departments. An example of this was the issue of storm water utility enabling legislation which was passed in the 1991 session of the General Assembly. While staff engineers had known for a year or longer that a financing plan was needed to meet federal permit requirements, many of them did not realize that it might take several years to gain authority from the state for new fee generating capability and were busy addressing engineering issues of the permit rather than pursuing needed state legislative authority. Many said they simply did not know how long it might take to gain legislative authority.

All too often, local government employees seek legislative initiatives from the General Assembly several weeks into the session when it is too late to introduce bills. Even in those cases where officials submit the legislative need with the local legislative proposal, there

is often inadequate information to support the issue to the extent needed for passage. This leads to frustration on the part of the local government employees and a tendency to blame the state when citizens inquire as to why certain actions can't be taken or certain services or programs are not available. An ability to pro-actively provide information to legislators would serve the citizens and the local government better.

A second part of this information should include urging state officials to make more local site visits and for local officials to provide state officials better information. While site visits do occur for public hearings, program audits, and other large issues, there is a sense among local government employees that many legislative initiatives would be more fully implemented if the persons at the state level responsible for drafting and reviewing legislation better understood local conditions. State officials, on their part, say local governments provide inadequate information for them to understand local programs and that it often isn't provided in a time frame which assists them in legislative review and analysis. One locality, after numerous requests for additional state funds for local program needs for poverty populations, finally got the attention of the governor's office. When a member of the governor's staff called local officials to obtain more information on the problem, the staff member said "I didn't realize you had any poor people. No one ever explained that you had a large working poor population." Better information provided by the local government might have saved considerable time and frustration, would have better

served the poor people in question, and might have limited the need for several legislative items to be introduced by the local government.

The literature speaks to the importance of information in the decision making of the individual legislator. Most of the research focuses on informal sources of such information, such as cues from other legislators or from interest groups. The growing complexity of legislative issues and the growth of legislative research staffs points to a need for additional research on the importance of both in-depth data provided to legislators from both internal and external sources. This study provides insight as to the importance of this type of data in the legislative process of the Virginia General Assembly. Other part time state legislatures should find similar importance placed on this factor in legislative outcomes.

#### Legislative Elections

Regarding up-coming legislative elections, local officials should submit requests, if possible, so that the members of the legislative delegation can support the items without concern for the election impact (e.g., ask for child protection initiatives in an election year and new taxing authority in a non-election year). If this is not possible, efforts should be made to garner constituency support so that the legislator feels supporting the issue is doing the citizens' will. Local government officials can lose the presence in the General Assembly of valuable expertise and seniority representing their locality if there is frequent turnover in state legislators from their jurisdiction. Therefore local officials should be concerned over presenting controversial

issues which have no chance of passage and present a political liability to state legislators.

### Political Factors

#### Support of the Governor

The governor in Virginia is strong due to control of the budget and policy development process. This is tempered by the term limitation. As such, the governor's support of an issue can help in the passage of a bill and the inclusion of an item in the governor's legislative proposal will greatly enhance its chance of passage. These findings are consistent with the literature findings that the chief executive is very influential in the legislative process.

There are limited actions which local governments can take relative to this phenomena. However, a major initiative which numerous local governments support might be presented as an object for inclusion in the governor's legislative agenda, if it is of state wide interest and importance.

#### Interest Group Support and Opposition

Members of the General Assembly tend to listen to all interest groups on an equal basis, giving weight to those who represent a larger number of citizens or who consistently provide reliable, useful information. In this, local governments are viewed as another interest group and are neither at an advantage nor a disadvantage in their lobbying efforts before the General Assembly. What is critical is that those giving testimony ensure that it is reliable, timely, and points out



possible negative affects which a proposal may have so that legislators do not unwittingly vote for something which will have major untoward impacts on another constituency group.

Also important is the observation that the lack of interest group support can delay action on a bill and that numerous groups supporting a bill generally carries more weight with General Assembly members. This should underscore the importance of local policy makers showing support for all legislative items of importance to them, and not leaving the lobbying to another group. It also underscores the importance of articulating what groups support an issue, if the local government is aware of several local interest groups which are supportive of the issue.

#### Party Support

Party support is not a major factor in legislative outcome in Virginia. While this may shift with the 1991 legislative reapportionment, local governments are limited in their ability to impact party support and should focus on other factors as a more productive line of action. The literature suggests that the presence of a two party system would make the party support more important in legislative outcomes. The stronger Republican presence in the General Assembly which will be present in 1992 will allow this proposition to be tested in future years.

### Voting Strategies

Voting strategies are not a major factor in the conduct of floor action in the Virginia General Assembly. While legislators form informal groups of friends and vote in these groups on issues which are not controversial, the limited importance of strategic voting should lead local governments to direct their efforts to impact legislative outcomes by way of other avenues.

This finding is not consistent with literature in that strategic voting is a major issue identified in the literature. However, the strength of the committee system in the Virginia General Assembly may account for this difference in that the floor action becomes less important due to the committee strength. This proposition should be explored in other states with strong committee systems.

### Institutional Factors

#### Committee Support

In that committee action is identified as the critical point in a bill's passage, urban policy actors with legislation before the General Assembly need to aggressively pursue their case before committees or, if appropriate, subcommittees. Some local government officials do testify before committees on key issues. However, many issues are handled by the local government liaison who may need to be in two committee meetings at once or may need to meet with individual legislators to garner support for a bill at the same time as an important committee meeting.

Some localities in the state have addressed this concern by making additional staff available during the legislative session to speak to specific issues or to monitor certain issues of special interest. While the requirements for official lobbyists to be registered limits general use of large numbers of local government staff, other staff can monitor committee meetings to get a sense as to which legislators support those items of interest to the locality, can report any action to amend or kill a bill, and can hear testimony against the bill to better counter it in that session or future sessions. This is an important function, given the lack of records on committee deliberations.

Regarding the research, there are two areas which the study points out as areas of interest for further investigation: (1) The emerging importance of subcommittees, their power, and the implications for legislative action if a group as small as five determine the fate of a bill; and (2) The issue of split committee votes. While one person interviewed indicated that split votes are merely indicators of controversial bills which would have a floor fight regardless of committee vote, others felt committee outcomes affect voting patterns on the floor. Several case studies support this view but there are not enough studies with split committee votes to be conclusive. Further study of a larger number of committees would be productive.

#### Clout of Key Legislators

The importance of patron clout should spur local policy makers to participate in regional or state-wide coalitions to determine if other localities are considering similar legislative initiatives and, if so,

whether that locality's patron might carry more clout in proposing the bill. In these cases, local officials should simply urge their legislative delegation to support the issue through co-patronage, rather than introducing their own bill.

It is also important that policy actors wishing to influence the legislative process pay heed to both the House and the Senate as support in one does not guarantee passage of the bill. In addition, it is important to follow a bill carefully during the legislative session and offer strategies for compromise to the patron so that the issue might be passed, albeit in an altered form.

The literature places great importance on the role of key legislative actors such as agenda setters and legislators with personal clout. The findings of this research is consistent with the literature except that the constraints of the General Assembly on floor action limit the power of agenda setters on the floor.

#### Number of Co-Patrons

While co-patrons can be important to a bill's success, how local policy makers can impact this factor is less obvious. Again, regional or state-wide coalitions offer the opportunity for local policy makers to work to craft legislation which numerous legislators could support and co-patron. Clear articulation of the importance of an issue for local government also can assist in obtaining strong co-patron support from that city's legislative delegation. This sends the message to other legislators that the issue is important and can be agreed upon. This supports the literature to the extent that it recognizes the

importance of co-patronage. It does not, however, support the literature findings that a large number of co-patrons uniformly increases the likelihood of passage. This study indicates that a co-patron list representative of a cross section of the state and of both chambers was more important than sheer numbers.

#### Legislative schedules

Absent longer legislative sessions there is little which can be done relative to the constraints which the session length place on the consideration of a bill. Several persons interviewed said longer sessions were not supported by most members of the General Assembly because they could not take more time from their primary employment for legislative matters. One strategy which local governments can use is to work with delegations to ensure that important bills are prefiled so that they can benefit from having the full session for consideration.

The literature finds that longer legislative sessions appear to be more productive and full time legislators tend to be more professional. However, the average state legislature handles approximately 2,000 bills per session. The Virginia General Assembly handles this average number and yet has one of the shortest legislative sessions among all the states. This indicates a level of efficiency which Congress and states with full time legislatures could probably not match. Most of the studies in the literature were completed prior to the reform of many state legislators in the 1970's which increased staff support and formalized committee structures in many part time legislatures. This study shows the Virginia General Assembly is perceived as effective by

both legislative actors and observers. This finding points to a need for the literature findings on the greater effectiveness of longer sessions to be re-examined in light of the reforms.

#### Precedent Setting

The recommendation derived from an understanding of the conservative nature of the General Assembly is simply that, to the extent possible, local governments should propose legislation with a narrow scope of power and which will limit the potential for setting precedent. As numerous legislative actors found in the tree preservation issue, it is not effective to propose limiting precedent simply by saying the legislation will apply only to certain size cities or will only change one charter. The precedent is still being set for others to do the same.

In these cases, the best approach is probably to propose general legislation, work with various groups to find out what the opposition will be, address the concerns of the opponents plus any property right concerns in the legislation, and work to get a broad base of support state-wide. Talking to key legislators in advance as to what the barriers to passage might be and providing study information and examples from other states would be useful.

While the literature on precedent setting is limited, the literature does support the concept that governance is, generally, incremental in nature. The national experience supports the finding with a review of how few major new initiatives are enacted (e.g., Model Cities,

Chesapeake Bay Initiative). The validity of this finding is supported by this study and should be corroborated by studies of other states.

#### Nature of the Legislation

##### Regulatory Legislation

In that localities need authority to regulate certain activities, it is a given that some controversial regulatory bills will be introduced. Limiting the scope of regulation requested and addressing concerns for the property rights of those to be regulated would enhance the likelihood of passage of a regulatory initiative. In addition, local governments should work to positively impact other factors affecting legislative outcome when a regulatory item is at issue.

Legislative relief, when sought, should fine tune regulatory policy; not redirect or rewrite the regulation. However, every effort should be made to anticipate regulatory impacts and provide input to both legislative and bureaucratic actors prior to implementation of regulatory legislation and regulations. Local government officials often complain about citizen groups which disagree with local regulations after implementation but never provided input into the development of the regulations. Yet local governments often fail to provide meaningful and timely input to proposed state regulations and regulatory legislation. While this is partially due to the limited time often available for comment from the state, it is also due in part to local governments failing to take the time to provide detailed information on the potential impacts of the proposed legislation. Legislators hear about the problems from localities after enactment of the law or

regulation has created financial or other implementation burdens for the local governments.

This study supports the literature in its findings that protective regulatory policy will be accompanied by some level of controversy which may affect outcomes. However, consistent with the literature, regulatory policy to protect the citizens is enacted when a perceived need is established that the public good will be served by the regulation. The study also supports the finding<sup>216</sup> that interest group hostility to regulation is most likely to occur when groups, such as local governments, see the regulations as adversely affecting their financial interests.

#### Service Provision

Service provision is one of the main thrusts of legislators' constituency work. Local governments are one of many constituencies and, as such, must work to show that their needs are not counter to those of other constituencies which the legislators represent. Service needs which local government policy makers can show are supported by a broad base of the community will have a higher likelihood of passage. This is consistent with the literature findings that distributive policies pass with relative ease while redistributive policies often fail or face great controversy prior to passage.

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<sup>216</sup> Ripley and Franklin, Policy Implementation and Bureaucracy, 148.



Summary

This research sought to identify, from among a host of factors found in the literature, what factors were critical in determining the outcome of legislation before the General Assembly of Virginia. While many factors played a role, those which were constant were: (1) The clout and number of patrons; (2) The support of the committee reviewing the legislation in both houses; (3) The support of the governor; (4) The merit of the legislation; (5) The perceived support for the legislation among interest groups and among the constituency.

From the findings, recommendations for local policy actors seeking to impact the legislative process for the benefit of their cities were drawn which included:

1. Focus legislative proposals to essential issues, and provide them in a priority order with background data which includes potential impacts.
2. Ensure that monitoring is provided at all critical committee meetings so opposition and support is a known quantity for present and future action. Urge the General Assembly to maintain some records of this information.
3. Build coalitions with other cities or counties with similar interests to expand support for an issue. Emphasis in such coalitions should be placed on sharing resources to meet everyone's needs rather than trying to reach consensus on one or two needs everyone can support.
4. Assist the local legislators work by seeking realistic initiatives, by providing research and information on issues well before the session, and by providing alternatives for compromise on the

requested initiatives. Help local government actors understand the legislative process so they can provide proposals and information on needed legislative initiatives so that they can be reasonably addressed.

5. If there is strong constituency support for a legislative item, it is critical that the local government provide that information to the legislators. For initiatives which are in the best interest of the constituency but lack any visible supporters and hence lack legislative delegation support, local policy makers should seek coalitions among municipalities with similar interests which might have local legislators and constituencies more sympathetic to a particular issue.

6. To the extent possible, local governments should propose legislation with a narrow scope of power and which will limit the potential for setting precedent and protects individual property rights.

Implementation of these recommendations can assist in impacting legislative initiatives of local governments. These factors, as stated, are equally applicable to areas of interest outside the environmental arena. The factors identified, however, will have a different rate of occurrence in other policy areas (e.g., regulatory nature is less of a concern in educational issues while constituent service is a prevalent factor). This does lead to a need for careful monitoring of the legislative environment which is rendered difficult in the Virginia General Assembly due to lack of records of the proceedings of committees.

The state should be urged to record what interest groups speak for or against an issue in committee and what are the major proposed amendments. This would enable any interested party to ascertain

something of the opposition which may have arisen over a bill so that the opposition concerns might be addressed in subsequent legislative efforts.

Several local governments in Virginia regularly suggest that Dillon's Rule should be suspended in Virginia, thus allowing local governments broad authority without legislative approval. Given the conservative nature of Virginia, this is not likely to gain legislative approval in the near future. Local governments would be better served working within the existing governmental structure and with other local governments, constituency groups, and key legislators to develop legislative initiatives that would address the most critical local governance issues in a sequential fashion over several legislative sessions.

Recommendations for further research are as follows:

1. That a more in-depth analysis of the importance of the split committee vote be undertaken. There is little information on this issue and it was noted by numerous legislative actors as an issue in predicting legislative outcomes.

2. That the emergence of subcommittees as new decision centers be studied in light of the power which is placed in the hands of a few.

3. That the questions raised in this research be expanded to legislators and legislative proposals from other localities in Virginia to confirm or contrast the findings of this study.

The findings of this research, in general, support the literature on the legislative process in state government. However, the literature tends to focus on the floor action while legislative actors and bill

histories indicate that committee action is the more important determinant of outcomes. While data on committee action is less available than that of floor action, the increasing workload in state legislatures and the increasing complexity of legislative issues is forcing much of the decision making to the committee and subcommittee level. The understanding of the functioning of these committees and subcommittees is critical to analysis of the legislative process. The methodology and instruments developed in this research are one avenue for study of legislative outcomes focused at a level more discreet than floor action. More research is needed in this area.

The findings of this research have been requested by numerous persons involved in the legislative process in Virginia, and should be made available to local government policy makers. The findings would also be of use to any citizen seeking to understand or access the legislative process in this state or any state with a legislature similar to that in Virginia.

If implemented, these recommendations will not provide every urban mayor or manager all the legislative power and authority they feel they need from the General Assembly. However, the record of the legislative process and the perceptions of the legislative actors undergird these recommendations and, as such, the recommendations should assist in addressing the need for improved legislative outcomes. Future research will evaluate how well implementation occurs and how effective the changes are in achieving legislative goals.

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**APPENDIX I**  
**ENACTMENT OF LOCAL INTEREST**  
**LEGISLATION IN VIRGINIA**

APPENDIX I

ENACTMENT OF A LOCAL INTEREST BILL  
IN THE VIRGINIA GENERAL ASSEMBLY

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This example is of a House Bill requesting local authority to charge impact fees for land-disturbing activities.

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Local government officials determine  
legislative needs for session

Forward list to Legislative Delegation

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o o      Member of Delegation agrees to patron bill      o o  
            (Assumes a Delegate will Patron the Bill)

Bill is drafted by Legislative Services

Bill is introduced in the House of Delegates

Bill is ordered printed and Referred to House  
Committee on Counties, Cities and Towns

o o      Bill is Reported favorably from      o o  
            Committee to floor of House

Bill is read first time

Bill is read second time and two amendments are  
proposed and accepted by the patron and delegates

o o      Bill is read third time      o o  
            Roll call vote passes the bill

---

Bill is sent to Senate  
Bill is read first time

Bill is sent to Senate  
Committee on Local Government

o o Bill is reported favorably from Committee to floor of Senate o o

Bill is read a second time  
No amendments are proposed

o o Bill is read third time By roll call vote it passes o o

---

Bill is enrolled and signed by the  
Speaker of House and the President of Senate

o o Bill is sent to the Governor for Approval o o

Bill becomes effective July 1 of same year

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The process would be much the same for a successful Senate bill.

**Bold** Marks critical points for a bill

o o Marks the places where a bill could fail to be forwarded and therefore, not become law.

**APPENDIX II**  
**THE CALENDAR OF THE 1991**  
**GENERAL ASSEMBLY SESSION**



REVISED

# JANUARY 1991

SUN	MON	TUES	WED	THUR	FRI	SAT
		1	2	3	4	5
6	7	8	9 (1) <small>General Assembly convenes (noon) Joint Assembly Last day to file charter, petitions, &amp; rules &amp; property tax exemption bills</small>	10 (2)	11 (3)	12 (4)
13 (5)	14 (6)	15 (7)	16 (8) <small>All requests for drafts, redrafts, &amp; corrections to Legislative Services by 5:00 p.m.</small>	17 (9)	18 (10) <small>All committees to finish work on their carried over bills by 11:59 p.m.</small>	19 (11)
20 (12)	21 (13)	22 (14) <small>Last day to file bills &amp; joint resolutions</small>	23 (15)	24 (16)	25 (17)	26 (18)
27 (19)	28 (20)	29 (21)	30 (22)	31 (23)		

DIVISION OF LEGISLATIVE SERVICES

# FEBRUARY 1991

SUN	MON	TUES	WED	THUR	FRI	SAT
					1 (24)	2 (25)
3 (26) Committee responsible for revenue and appropriation bills in which work on such bills by midnight	4 (27) Last day for each house to act on its own legislation (except revenue & appropriation bills)	5 (28) 1 hour of introduction to receive proposed amendments on revenue and appropriation bills by noon	6 (29)	7 (30) 1 hour of introduction to complete work on revenue & appropriation bills	8 (31) Last day to confirm gubernatorial appointments made during the recess	9 (32)
10 (33)	11 (34) Last day for each House to act on the revenue and appropriation bills of the other House and approval budget conference	12 (35)	13 (36)	14 (37)	15 (38) Last day to begin to fill certain judicial vacancies	16 (39)
17 (40)	18 (41) Last day for any committee action on legislation	19 (42) Budget conference to finish by midnight	20 (43)	21 (44) Budget conference report available by noon	22 (45) Only conference reports & certain joint resolutions may be considered	23 (46) Adjournment sine die
24	25	26	27	28		

DIVISION OF LEGISLATIVE SERVICES

NOTE: April 1, 1991 — Reapportioning House and Senate Districts  
 April 3, 1991 — Reconvened Session  
 November 18, 1991 — Reapportioning Congressional Districts

**APPENDIX III**

**LIST OF LEGISLATIVE ISSUES REVIEWED**

## APPENDIX III

## LIST OF LEGISLATIVE ISSUES REVIEWED

<u>Type of Issue</u>	<u>Year</u>	<u>City</u>	<u>Title of Legislative Proposal Item</u>
Environmental	87	Newport News	Erosion and sediment control penalties
Environmental	87	Virginia Beach	Ban of Phosphate Detergents
Environmental	87	Virginia Beach	Mining and Milling of Uranium
Environmental	87	Virginia Beach	Tree Protection
Environmental	88	Chesapeake	Tree preservation **
Environmental	88	Virginia Beach	Back Bay & North Landing cleanup/restor.
Environmental	88	Virginia Beach	Mining and milling of uranium **
Environmental	88	Virginia Beach	Stop Work Orders for wetlands protection
Environmental	88	Virginia Beach	Tree protection *
Environmental	89	Chesapeake	Tree preservation **
Environmental	89	Hampton	Amendment of Chesapeake Bay Preservation Act
Environmental	89	Hampton	Non tidal wetlands
Environmental	89	Newport News	Recycling objectives state wide
Environmental	89	Newport News	Tree preservation *
Environmental	89	Portsmouth	Tree conservation *
Environmental	89	Virginia Beach	Back Bay & North Landing cleanup/restor. **
Environmental	89	Virginia Beach	Non-Tidal Wetlands *
Environmental	89	Virginia Beach	Transferable Development Rights
Environmental	89	Virginia Beach	Tree Protection *
Environmental	89	Chesapeake	Support entities cleaning up Elizabeth River
Human services	87	Chesapeake	Increased funding for Pendleton Child services
Human services	87	Chesapeake	Indigent health care
Human services	87	Portsmouth	Emergency shelter for adults
Human services	87	Portsmouth	Fraud Workers
Human services	87	Portsmouth	Long term care
Human services	87	Portsmouth	State and Local Hospitalization
Human services	87	Portsmouth	Testimony of third parties
Human services	87	Portsmouth	Uniform emancipation age
Human services	87	Virginia Beach	Increased Funding for Community Services Board Programs
Human services	87	Virginia Beach	Indigent Health Care
Human services	87	Virginia Beach	Pendleton Child Services - Increased Appropriation
Human services	88	Chesapeake	MH/MR/SA funding
Human services	88	Norfolk	Additional funding for SLH
Human services	88	Norfolk	Creation and funding of Housing Partnership
Human services	88	Portsmouth	Fraud Workers
Human services	88	Portsmouth	General Hospitals
Human services	88	Portsmouth	Indigent health care/funding for medical schools
Human services	88	Portsmouth	MH/MR/SA
Human services	88	Portsmouth	State and Local Hospitalization
Human services	88	Virginia Beach	Increased funding for MH/MR/SA
Human services	88	Virginia Beach	Indigent health care
Human services	88	Virginia Beach	Pendleton Child Services - Relocation
Human services	88	Virginia Beach	Pendleton Child Services - Increased Appropriation
Human services	89	Chesapeake	Health department funding
Human services	89	Chesapeake	Indigent health care
Human services	89	Chesapeake	MH/MR/SA
Human services	89	Chesapeake	Pendleton child services - relocation
Human services	89	Chesapeake	Pendleton child services - Chesapeake site
Human services	89	Chesapeake	Social services shortfall
Human services	89	Chesapeake	Tidewater regional group home commission
Human services	89	Hampton	Administrative costs for Social services

<u>Type of Issue</u>	<u>Year</u>	<u>City</u>	<u>Title of Legislative Proposal Item</u>
Human services	89	Hampton	Housing assistance for low income individuals
Human services	89	Hampton	SLH
Human services	89	Newport News	Certification of foodservice managers
Human services	89	Newport News	Certification of sanitarians
Human services	89	Newport News	HIV testing in prostitution related criminal offenders
Human services	89	Newport News	Low income housing loans
Human services	89	Portsmouth	Fraud Workers
Human services	89	Portsmouth	General Hospitals
Human services	89	Portsmouth	Indigent health care/funding for Medical College of HR
Human services	89	Portsmouth	State and Local Hospitalization
Human services	89	Virginia Beach	Indigent health care
Human services	89	Virginia Beach	Pendleton Child Service Center
Local power	87	Chesapeake	Direct election of mayor
Local power	87	Chesapeake	Personal property tax relief for elderly and disabled
Local power	87	Newport News	Appointment of school board members
Local power	87	Portsmouth	Inoperative motor vehicles
Local power	87	Virginia Beach	Direct Election of Mayor
Local power	87	Virginia Beach	Maintenance of Private Property
Local power	87	Virginia Beach	Municipal Powers Expansion
Local power	87	Virginia Beach	Tax Relief for Elderly and Handicapped
Local power	88	Chesapeake	Local autonomy - reverse Dillon Rule
Local power	88	Chesapeake	Reduction of seasonal motor home taxation
Local power	88	Norfolk	Structure of bond refinancing
Local power	88	Newport News	Appointment of city attorney
Local power	88	Newport News	Appointment of school board members
Local power	88	Newport News	Direct election of mayors
Local power	88	Newport News	Non partisan election of members of City Council
Local power	88	Virginia Beach	Alternates to Board of Zoning Appeals
Local power	88	Virginia Beach	Amortization of Non-conforming signs
Local power	88	Virginia Beach	Municipal powers expansion
Local power	88	Virginia Beach	Voter Information
Local power	89	Chesapeake	Local autonomy
Local power	89	Hampton	Public budget hearing
Local power	89	Newport News	Direct election of school board members
Local power	89	Virginia Beach	Civil Penalties for Violation of Zoning Ordinance
Local power	89	Virginia Beach	Alternate to Zoning Board of Appeals
Misc issues	87	Chesapeake	Exemption from taxation - The Fine Foundation
Misc issues	87	Chesapeake	William Biggs age discrimination settlement
Misc issues	87	Newport News	Design build contracts allowable
Misc issues	87	Newport News	Disclosure requirement for PUDs
Misc issues	87	Newport News	Sign control requirements to be standard
Misc issues	87	Newport News	Virginia flow control statutes for refuse disposal
Misc issues	87	Newport News	Worker's compensation requirements
Misc issues	87	Portsmouth	Changes to state code governing HRSD
Misc issues	87	Portsmouth	Clerk of the Circuit court payment provision
Misc issues	87	Virginia Beach	Grain Grade Standards
Misc issues	87	Virginia Beach	Privacy Protection
Misc issues	87	Virginia Beach	State Registration for New pesticides
Misc issues	87	Virginia Beach	Tax Exemption of Water Works Equipment
Misc issues	87	Virginia Beach	Two-year agricultural course
Misc issues	88	Norfolk	Charter change on weekly Council meetings
Misc issues	88	Newport News	Design build contracts allowable
Misc issues	88	Newport News	Funding of constitutional officers method
Misc issues	88	Newport News	Virginia Flow control statutes for refuse disposal
Misc issues	88	Virginia Beach	Going out of business sale
Misc issues	88	Virginia Beach	Grain Grade Standards
Misc issues	88	Virginia Beach	Health & related insurance for employees
Misc issues	88	Virginia Beach	Tax Exemption for Water works equipment
Misc issues	88	Virginia Beach	Two-year agricultural course
Misc issues	89	Hampton	Freedom of Information act
Misc issues	89	Hampton	VSRS for council members

<u>Type of Issue</u>	<u>Year</u>	<u>City</u>	<u>Title of Legislative Proposal Item</u>
Misc issues	89	Newport News	Freedom of information act
Misc issues	89	Newport News	Funding of constitutional officers method
Misc issues	89	Virginia Beach	Health & related insurance for City employees
Misc issues	89	Virginia Beach	Land use assessment
Misc issues	89	Virginia Beach	State registration for new pesticides
Misc issues	89	Virginia Beach	Tax exemption for water works equipment
Misc issues	89	Virginia Beach	VSRS for Council Members
Pay for devel.	87	Newport News	Developers to pay for transportation improvements
Pay for devel.	87	Virginia Beach	Offsite Improvements by Developers
Pay for devel.	88	Chesapeake	Local revenue options for infrastructure (impact fees)
Pay for devel.	88	Newport News	Developer to assist in cost of site improvements
Pay for devel.	89	Chesapeake	Pro rata share of development costs
Pay for devel.	89	Chesapeake	Recordation or transfer fees for infrastructure funding
Pay for devel.	89	Hampton	Dev. impact, infrastructure, off site improvements
Pay for devel.	89	Newport News	Off site improvements
Pub ed/libraries	87	Chesapeake	Full funding for education
Pub ed/libraries	87	Newport News	Elementary guidance system
Pub ed/libraries	87	Newport News	Implementation of Report of Commission on Excellence in Educ
Pub ed/libraries	87	Newport News	Literary loan fund for school construction only
Pub ed/libraries	87	Newport News	Oppose H.B. 63 on escrow for school contract funds
Pub ed/libraries	87	Newport News	School funding formula
Pub ed/libraries	87	Newport News	State support for libraries
Pub ed/libraries	87	Portsmouth	Education
Pub ed/libraries	87	Virginia Beach	Funding of Education
Pub ed/libraries	88	Chesapeake	Issuance of bonds in anticipation of school funds
Pub ed/libraries	88	Chesapeake	State education mandates
Pub ed/libraries	88	Chesapeake	State participation in school construction costs
Pub ed/libraries	88	Hampton	Teachers' salaries
Pub ed/libraries	88	Norfolk	Fund Standards of Quality
Pub ed/libraries	88	Norfolk	Offer in-state tuition for military dependents
Pub ed/libraries	88	Newport News	Funding for staff development
Pub ed/libraries	88	Newport News	Funding for SOGs
Pub ed/libraries	88	Newport News	Literary loan fund for school construction only
Pub ed/libraries	88	Newport News	Oppose elimination of early childhood programs
Pub ed/libraries	88	Newport News	State support for libraries
Pub ed/libraries	88	Portsmouth	Education
Pub ed/libraries	88	Virginia Beach	Direct election of school board
Pub ed/libraries	88	Virginia Beach	Funding for education
Pub ed/libraries	89	Chesapeake	State education mandates
Pub ed/libraries	89	Chesapeake	State participation in school construction costs
Pub ed/libraries	89	Hampton	School board salaries
Pub ed/libraries	89	Hampton	School construction funding
Pub ed/libraries	89	Newport News	State support for libraries
Pub ed/libraries	89	Portsmouth	Bonus state aid for public libraries
Pub ed/libraries	89	Portsmouth	Education
Pub ed/libraries	89	Virginia Beach	Direct Election of School Board
Pub ed/libraries	89	Virginia Beach	Educational Appropriation Criteria
Pub ed/libraries	89	Virginia Beach	Funding of Education
Rec/culture	87	Newport News	Restoration of 1810 Clerk's Office in Denbigh
Rec/culture	87	Portsmouth	Historic, architectural or cultural sites in Portsmouth
Rec/culture	87	Portsmouth	Tidewater recreation and stadium authority
Rec/culture	87	Virginia Beach	Virginia Beach Arts Center
Rec/culture	88	Newport News	Restoration of Newsome House
Rec/culture	88	Virginia Beach	Scenic Rivers designation
Rec/culture	88	Virginia Beach	Virginia Beach Arts Center
Rec/culture	89	Hampton	Hampton carousel
Rec/culture	89	Newport News	Limits to before/after school child care
Revenue	87	Chesapeake	Funding for Chesapeake obstetrical care program
Revenue	87	Portsmouth	Maintenance of Public Waterways - boat removal

<u>Type of Issue</u>	<u>Year</u>	<u>City</u>	<u>Title of Legislative Proposal Item</u>
Revenue	87	Portsmouth	Minimum charge for business license tax
Revenue	87	Portsmouth	Service charge on state property
Revenue	87	Newport News	State assistance in coverage federal reductions
Revenue	87	Virginia Beach	Business License Tax on Mini Warehouses
Revenue	87	Virginia Beach	Change in the General Obligation Bond Limit
Revenue	87	Virginia Beach	Proration of Personal Property Tax
Revenue	87	Virginia Beach	Staffing positions in the Extension Service
Revenue	87	Virginia Beach	Unclaimed Deposits
Revenue	88	Chesapeake	Bond issuance equal to debt retirement
Revenue	88	Chesapeake	Personal property taxes on daily rental equipment
Revenue	88	Chesapeake	Taxation of rolling stock
Revenue	88	Norfolk	Oppose classification of short term rental as capital
Revenue	88	Newport News	Revenue license to partnerships
Revenue	88	Newport News	Short term rental
Revenue	88	Portsmouth	Daily rental equipment
Revenue	88	Portsmouth	Proration of taxes on motor vehicles
Revenue	88	Portsmouth	Service charge on state property
Revenue	88	Portsmouth	State mandates and state aid
Revenue	88	Portsmouth	Taxation of rolling stock
Revenue	88	Virginia Beach	Business license tax on mini warehouses
Revenue	88	Virginia Beach	Funding for courts building
Revenue	88	Virginia Beach	Staffing positions in the Extension Service
Revenue	89	Chesapeake	Short term rental equipment
Revenue	89	Hampton	Taxation of rental video tapes
Revenue	89	Norfolk	Confiscated drug monies and properties to localities
Revenue	89	Newport News	Admissions tax
Revenue	89	Newport News	Distribution of ABC taxes
Revenue	89	Newport News	Interest on retained payments to contractors
Revenue	89	Newport News	Local option sales tax
Revenue	89	Newport News	Short term rental of equipment
Revenue	89	Portsmouth	Daily rental equipment
Revenue	89	Portsmouth	Minimum charge for business license tax
Revenue	89	Portsmouth	Proration of taxes on motor vehicles
Revenue	89	Portsmouth	Service charge on state property
Revenue	89	Portsmouth	State mandates and state aid
Revenue	89	Portsmouth	Taxation of rolling stock
Revenue	89	Portsmouth	Tidewater Regional group home state share
Revenue	89	Virginia Beach	Assumption of Tourist Establishment Inspections
Revenue	89	Virginia Beach	Increase in court Fees
Revenue	89	Virginia Beach	Merchants capital tax
Revenue	89	Virginia Beach	Resort area retail sales tax
Safety/crim jus	87	Newport News	Disorderly conduct statute
Safety/crim jus	87	Newport News	Forfeiture statutes
Safety/crim jus	87	Newport News	Peninsula Regional Academy of Criminal Justice
Safety/crim jus	87	Newport News	Polygraph examinations
Safety/crim jus	87	Portsmouth	Fire boats
Safety/crim jus	87	Virginia Beach	Fire Investigation Warrant
Safety/crim jus	87	Virginia Beach	Hauling of Materials on Highways
Safety/crim jus	87	Virginia Beach	Improper Driving
Safety/crim jus	87	Virginia Beach	Licensing of Mopeds
Safety/crim jus	88	Chesapeake	Local ordinance to prohibit misdemeanors
Safety/crim jus	88	Newport News	Admin search warrants for building code enforcement
Safety/crim jus	88	Newport News	Decriminalization of local code infractions
Safety/crim jus	88	Portsmouth	Fire boats
Safety/crim jus	88	Virginia Beach	Operation of mopeds
Safety/crim jus	88	Virginia Beach	Chesapeake contraband forfeiture act
Safety/crim jus	88	Virginia Beach	Runaways and secure detention
Safety/crim jus	88	Virginia Beach	State assumption of Juvenile Court Service unit
Safety/crim jus	89	Chesapeake	Contraband forfeiture
Safety/crim jus	89	Chesapeake	Corrections funding
Safety/crim jus	89	Chesapeake	Court fees for court facilities costs
Safety/crim jus	89	Chesapeake	Fire boats

<u>Type of Issue</u>	<u>Year</u>	<u>City</u>	<u>Title of Legislative Proposal Item</u>
Safety/crim jus	89	Chesapeake	Fire programs funds
Safety/crim jus	89	Chesapeake	Juvenile detention center - prohibition of adults
Safety/crim jus	89	Chesapeake	Juvenile detention center - expansion funding
Safety/crim jus	89	Hampton	Funding for courts building
Safety/crim jus	89	Norfolk	Jail funding allocation as a ratio of cost
Safety/crim jus	89	Norfolk	Power to try drug co-conspirators together
Safety/crim jus	89	Newport News	Age limit for juvenile detention
Safety/crim jus	89	Newport News	Court fees for facility construction
Safety/crim jus	89	Newport News	Exemption for filing for search warrant affidavit
Safety/crim jus	89	Newport News	Fire programs funds
Safety/crim jus	89	Newport News	Funds for start up of expansion to Juvenile facility
Safety/crim jus	89	Newport News	Interfering with law enforcement officer
Safety/crim jus	89	Newport News	Jail overcrowding
Safety/crim jus	89	Newport News	Payments for state wards
Safety/crim jus	89	Newport News	Revision of wrecker service regulations
Safety/crim jus	89	Portsmouth	Fire boats
Safety/crim jus	89	Portsmouth	Fire programs fund
Safety/crim jus	89	Portsmouth	Local crime commissions
Safety/crim jus	89	Portsmouth	Virginia crime line program
Safety/crim jus	89	Virginia Beach	Fire Prevention and Protection
Safety/crim jus	89	Virginia Beach	Runaways and secure detention
Tourism/econ dev	87	Hampton	Eminent domain power for industrial dev. authority
Tourism/econ dev	87	Hampton	Powers of Regional Authority
Tourism/econ dev	87	Newport News	Extension of real estate leases
Tourism/econ dev	87	Newport News	Seaports and airports improvements
Tourism/econ dev	87	Newport News	Special assessment districts for special needs
Tourism/econ dev	87	Newport News	Urban project debt service fund
Tourism/econ dev	87	Virginia Beach	Farmers Wholesale Market
Tourism/econ dev	87	Virginia Beach	State support of Beach Erosion Program (dredging)
Tourism/econ dev	88	Chesapeake	Construction of wholesale/retail farmer's market
Tourism/econ dev	88	Newport News	Changes to Diamonstein Commission report
Tourism/econ dev	88	Newport News	Urban Enterprise Zone change for small employers
Tourism/econ dev	88	Virginia Beach	Farmers Wholesale Market
Tourism/econ dev	88	Virginia Beach	Master plan for Seashore state park (beach use)
Tourism/econ dev	88	Virginia Beach	State Registration for New pesticides
Tourism/econ dev	88	Virginia Beach	Virginia Beach Development Authority
Tourism/econ dev	89	Hampton	Hampton appointment to the Public Beach Commission
Tourism/econ dev	89	Newport News	Business incubator program
Tourism/econ dev	89	Newport News	Debt limitation
Tourism/econ dev	89	Virginia Beach	Farmers Wholesale Market
Transportation	87	Newport News	Commission on Transportation in the 21st Century
Transportation	87	Portsmouth	Highway Maintenance funds
Transportation	87	Portsmouth	Railroad relocation for Western Freeway
Transportation	87	Portsmouth	Western Freeway
Transportation	88	Norfolk	Alternative financing for transportation needs
Transportation	88	Norfolk	Charter change for Norfolk Airport Authority membership
Transportation	88	Newport News	Highway funding by local option sales tax or recordation tax
Transportation	88	Newport News	Highway funding by additional bonding authority
Transportation	88	Newport News	Highway funding by impact fees
Transportation	88	Newport News	Highway funding by regional tax
Transportation	88	Portsmouth	Railroad relocation for Western Freeway
Transportation	88	Portsmouth	Western Freeway
Transportation	88	Virginia Beach	Comm on Transportation in the 21st Century
Transportation	89	Chesapeake	Regional motor fuels surcharge for transport funding
Transportation	89	Chesapeake	Rt 168 Battlefield toll authority
Transportation	89	Hampton	Transportation
Transportation	89	Norfolk	Alternative financing for transportation needs
Transportation	89	Portsmouth	Railroad relocation for Western Freeway
Transportation	89	Portsmouth	Western Freeway
Transportation	89	Virginia Beach	Commission Transportation in the 21st Century



**APPENDIX IV**  
**PERSONS INTERVIEWED**

APPENDIX IV  
PERSONS INTERVIEWED

**Legislators and Legislative Assistants**

Person Interviewed	Residence	Years in Assembly	Committee Assignments
Senator Andrews	Hampton	27	Finance Education & Health Privileges & Elections Rules
Senator Earley	Chesapeake	4	Courts of Justice Rehabilitation & Social Services Local Government
Senator Miller	Norfolk	8	Commerce & Labor Rehabilitation & Social Services Local Government
Ms Farmer (Asst to Senator Stallings)	Virginia Beach	4	Courts of Justice Commerce & Labor Local Government General Laws
Delegate Christian	Hampton	5	Conservation & Natural Resources General Laws Labor & Commerce Militia & Police
Delegate Copeland	Norfolk	8	Chesapeake Bay & Its Tributaries Counties, Cities & Towns Finance Mining & Mineral Resources
Delegate Forehand	Chesapeake	11	Appropriations Chesapeake Bay & Its Tributaries Corporations, Insurance & Banking Education
Delegate Maxwell	Newport News	8	Chesapeake Bay & Its Tributaries Claims Conservation & Natural Resources Health, Welfare & Institutions
Delegate McClanan	Virginia Beach	19	Agriculture Corporations, Insurance & Banking General Laws Interstate Cooperation
Delegate Melvin	Portsmouth	5	Claims Counties, Cities & Towns Health, Welfare & Institutions Privileges & Elections

Person Interviewed	Residence	Years in Assembly	Committee Assignments
Delegate Moore	Portsmouth	7	Courts of Justice General Laws Roads & Internal Navigation
Delegate Moss and Marian Taylor, assistant to Delegate Moss	Norfolk	25	Appropriations Corporations, Insurance & Banking Nominations & Confirmations Rules

#### Other Legislative Actors

Person Interviewed	Position or Title
Robert Blue	Governor's Policy Office
Thomas Boyer	Reporter on the General Assembly Richmond Bureau Norfolk Virginian-Pilot
Clem Connor	Staff to House Committee on Counties, Cities and Towns Division of Legislative Services
Marty Farber	Staff to House Committee on Conservation and Natural Resources Division of Legislative Services
H.H. Holleman, Jr.	Clerk of the House of Delegates General Assembly of Virginia
Thomas R. Morris	Professor of Political Science University of Richmond
Susan Clarke Schaar	Clerk of the Senate General Assembly of Virginia

**APPENDIX V**  
**THE INTERVIEW INSTRUMENTS**

## SURVEY OF KEY LEGISLATIVE ACTORS: KEY LEGISLATORS

Person interviewed: \_\_\_\_\_ Date: \_\_\_\_\_  
 Position: \_\_\_\_\_

1. In the six Hampton Roads cities I have studied, there are variations in the number of issues presented in the Legislative proposals of the local governments. From your perspective, does a legislative proposal with a few selective issues have a greater likelihood of favorable action than a large, multi-issue package? \_\_\_\_\_  
 \_\_\_\_\_

2. In a number of instances found in this study, items in the legislative proposals of localities were never introduced as bills. How do you, as a member of a delegation, decide what issues to introduce as bills? \_\_\_\_\_  
 \_\_\_\_\_

3. Many proposed bills appear to "rise or fall" through committee actions. How important is the committee in determining the fate of a bill? \_\_\_\_\_  
 \_\_\_\_\_

If a legislator feels strongly about a bill which has been passed over, stricken, or otherwise killed by a committee, is there some mechanism to revive that bill? \_\_\_\_\_  
 \_\_\_\_\_

How likely is it to work? \_\_\_\_\_

Can you give an example? \_\_\_\_\_  
 \_\_\_\_\_

What are the informal factors which affect the assignment of members to a committee assignments? \_\_\_\_\_  
 \_\_\_\_\_

4. The literature on legislative action identifies factors which affect the outcome of a bill. As I list each of these, could you comment on how important each of these is in the Virginia General Assembly:

a) A large number of co-patrons increases the likelihood of a bill's passage. \_\_\_\_\_  
 \_\_\_\_\_

b) The status or clout of a bill's patron will affect the passage of a bill. \_\_\_\_\_  
 \_\_\_\_\_

c) The support of party leadership can assist a bill in passage. \_\_\_\_\_  
 \_\_\_\_\_

d) The level of staff support for a committee can effect how many bills are processed favorably by the committee. \_\_\_\_\_  
 \_\_\_\_\_

e) Busier committees are more likely to screen a bill out and not report it to the floor. \_\_\_\_\_  
 \_\_\_\_\_

f) A bill reported favorably by a committee which is well respected by the Assembly is more likely to pass. \_\_\_\_\_  
 \_\_\_\_\_

g) A bill with split committee vote is less likely to pass. \_\_\_\_\_  
 \_\_\_\_\_

h) When no interest groups or agencies show support for a bill, it is more likely to be postponed. \_\_\_\_\_  
 \_\_\_\_\_

i) Five or more interest groups showing support for a bill increases the likelihood of passage. Conversely, an equal number speaking against it will decrease likelihood of passage. \_\_\_\_\_  
 \_\_\_\_\_

j) An item placed before the legislature as part of the governor's budget is more likely to be passed. \_\_\_\_\_  
 \_\_\_\_\_

k) Legislative elections affect which bills will pass in a given year. \_\_\_\_\_  
 \_\_\_\_\_

1) A bill concerning an issue for which a study has been completed is more likely to pass when the study results become available. \_\_\_\_\_

5. Are there other factors which you feel play a key role in the passage or failure of a bill?  
\_\_\_\_\_

6. When several bills propose different legislation surrounding the same issue, the bill with the narrowest grant of power or impact on fewest localities appears to be most likely to pass. In your view, is this generally true or is it, perhaps, peculiar to the Hampton Roads localities? \_\_\_\_\_

7. Research tells us that the person who sets the agenda can heavily impact the outcome of a bill. Do you feel that agenda control significantly affects the outcome of bills? \_\_\_\_\_

Research tells us the some legislators support certain bills in order to gain other legislators votes for other bills of interest. Do you feel this sort of voting is a major factor in floor votes? \_\_\_\_\_

8. The role of a legislator has been described variously as fulfilling the dictates of the public, to exercising personal judgement as to what is best for the public, to some blend of these two roles. How would you characterize the role of a member of the General Assembly? \_\_\_\_\_

9. Finally, what do you feel determines whether a bill passes or does not pass? \_\_\_\_\_

## SURVEY OF KEY LEGISLATIVE ACTORS: COMMITTEE MEMBERS &amp; STAFF

Person interviewed: \_\_\_\_\_ Date: \_\_\_\_\_  
 Position: \_\_\_\_\_

1. In this study, I focused on environmental issues proposed by the cities of Hampton Roads over the past three years. As I list each of the issue areas, would you recall what were the critical factors which affected the outcome of the proposal?

- a) Erosion and sediment control penalties \_\_\_\_\_
- b) Ban of Phosphate Detergents \_\_\_\_\_
- c) Tree Protection \_\_\_\_\_
- d) Stop Work Orders for wetlands protection \_\_\_\_\_
- e) Amendment of Chesapeake Bay Preservation Act \_\_\_\_\_
- f) Non tidal wetlands regulations \_\_\_\_\_
- g) State wide recycling objectives \_\_\_\_\_
- h) Transferable Development Rights \_\_\_\_\_

2. Was there strong interest group action for or against each of these issues?

- a) Erosion and sediment control penalties \_\_\_\_\_
- b) Ban of Phosphate Detergents \_\_\_\_\_
- c) Tree Protection \_\_\_\_\_
- d) Stop Work Orders for wetlands protection \_\_\_\_\_
- e) Amendment of Chesapeake Bay Preservation Act \_\_\_\_\_
- f) Non tidal wetlands regulations \_\_\_\_\_
- g) State wide recycling objectives \_\_\_\_\_
- h) Transferable Development Rights \_\_\_\_\_

3. Many proposed bills appear to "rise or fall" through committee actions. How important is the committee in determining the fate of a bill? \_\_\_\_\_

If a legislator feels strongly about a bill which has been passed over, stricken, or otherwise killed by a committee, is there some mechanism to revive that bill? \_\_\_\_\_

How likely is it to work? \_\_\_\_\_

Can you give an example? \_\_\_\_\_

What are the informal factors which affect committee assignments? \_\_\_\_\_

4. The research on legislative action identifies factors which affect the outcome of a bill. As I list each of these, could you comment on how important you feel each of these is in the Virginia General Assembly:

- a) A large number of co-patrons increases the likelihood of a bill's passage. \_\_\_\_\_
- b) The status or clout of a bill's patron will affect the passage of a bill. \_\_\_\_\_
- c) The support of party leadership can assist a bill in passage. \_\_\_\_\_
- d) The level of staff support for a committee can effect how many bills are processed favorably by the committee. \_\_\_\_\_
- e) Busier committees are more likely to screen a bill out and not report it to the floor. \_\_\_\_\_
- f) A bill reported favorably by a committee which is well respected by the Assembly is more likely to pass. \_\_\_\_\_
- g) A bill with split committee vote is less likely to pass. \_\_\_\_\_
- h) When no interest groups or agencies show support for a bill, it is more likely to be postponed. \_\_\_\_\_
- i) Five or more interest groups showing support for a bill increases the likelihood of passage. Conversely, an equal number speaking against it will decrease likelihood of passage. \_\_\_\_\_
- j) An item placed before the legislature as part of the governor's budget is more likely to be passed. \_\_\_\_\_
- k) Legislative elections affect which bills will pass in a given year. \_\_\_\_\_
- l) A bill concerning an issue for which a study has been completed is more likely to pass when the study results become available. \_\_\_\_\_

5. What other factors do you feel play a key role in the passage or failure of a bill? \_\_\_\_\_

6. According to research, when several bills propose different legislation surrounding the same issue, the bill with the narrowest grant of power or impact on fewest localities is most likely to pass. In your view, is this generally true or is it, perhaps, peculiar to the Hampton Roads localities? \_\_\_\_\_

7. What do you feel determines whether a bill passes or does not pass? \_\_\_\_\_



## SURVEY OF KEY LEGISLATIVE OBSERVERS

Person interviewed: \_\_\_\_\_ Date: \_\_\_\_\_  
 Position: \_\_\_\_\_

1. In a number of instances found in this study, legislative initiatives identified by localities as a part of their legislative proposals were never introduced as bills. How do you think legislators decide what issues to introduce as bills?  
 \_\_\_\_\_  
 \_\_\_\_\_

2. Many proposed bills appear to "rise or fall" through committee actions. How important is the committee in determining the fate of a bill?  
 \_\_\_\_\_  
 \_\_\_\_\_

If a legislator feels strongly about a bill which has been passed over, stricken, or otherwise killed by a committee, is there some mechanism to revive that bill?  
 \_\_\_\_\_  
 \_\_\_\_\_

How likely is it to work? \_\_\_\_\_

Can you give an example? \_\_\_\_\_  
 \_\_\_\_\_

What are the informal factors which affect committee assignments? \_\_\_\_\_  
 \_\_\_\_\_

3. The literature on legislative action identifies factors which affect the outcome of a bill. As I list each of these, could you comment on how important each of these is in the Virginia General Assembly:

a) A large number of co-patrons increases the likelihood of a bill's passage.  
 \_\_\_\_\_

b) The status or clout of a bill's patron will affect the passage of a bill.  
 \_\_\_\_\_

c) The support of party leadership can assist a bill in passage. \_\_\_\_\_

d) The level of staff support for a committee can effect how many bills are processed favorably by the committee.  
 \_\_\_\_\_

e) Busier committees are more likely to screen a bill out and not report it to the floor.  
 \_\_\_\_\_

f) A bill reported favorably by a committee which is well respected by the Assembly is more likely to pass.  
 \_\_\_\_\_

g) A bill with split committee vote is less likely to pass. \_\_\_\_\_

h) When no interest groups or agencies show support for a bill, it is more likely to be postponed.  
 \_\_\_\_\_

i) Five or more interest groups showing support for a bill increases the likelihood of passage. Conversely, an equal number speaking against it will decrease likelihood of passage. \_\_\_\_\_

j) An item placed before the legislature as part of the governor's budget is more likely to be passed. \_\_\_\_\_

k) Legislative elections affect which bills will pass in a given year. \_\_\_\_\_

l) A bill concerning an issue for which a study has been completed is more likely to pass when the study results become available. \_\_\_\_\_

4. Are there other factors which you feel play a key role in the passage or failure of a bill? \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

5. When several bills propose different legislation surrounding the same issue, the bill with the narrowest grant of power or impact on fewest localities appears to be most likely to pass. In your view, is this generally true?

\_\_\_\_\_

6. In this study, I focused on environmental issues proposed by cities in Hampton Roads. For each of these issues, can you recall what factors were critical to the outcome of the proposal?

a) Erosion and sediment control penalties \_\_\_\_\_

b) Ban of Phosphate Detergents \_\_\_\_\_

c) Tree Protection \_\_\_\_\_

d) Stop Work Orders for wetlands protection \_\_\_\_\_

e) Amendment of Chesapeake Bay Preservation Act \_\_\_\_\_

f) Non tidal wetlands regulations \_\_\_\_\_

g) State wide recycling objectives \_\_\_\_\_

h) Transferable Development Rights \_\_\_\_\_

7. Was there strong interest group action for or against each of these issues?

a) Erosion and sediment control penalties \_\_\_\_\_

b) Ban of Phosphate Detergents \_\_\_\_\_

c) Tree Protection \_\_\_\_\_

d) Stop Work Orders for wetlands protection \_\_\_\_\_

e) Amendment of Chesapeake Bay Preservation Act \_\_\_\_\_

f) Non tidal wetlands regulations \_\_\_\_\_

g) State wide recycling objectives \_\_\_\_\_

h) Transferable Development Rights \_\_\_\_\_

8. Research tells us that the person whos sets the agenda can impact the outcome of a bill. Do you feel that agenda control significantly affects the outcome of bills? \_\_\_\_\_

\_\_\_\_\_

Research tells us the some legislators support certain bills in order to gain other legislators votes for other bills of interest. Do you feel this sort of voting is a major factor in floor votes? \_\_\_\_\_

\_\_\_\_\_

9. The role of a legislator has been described variously as fulfilling the dictates of the public, to exercising personal judgement as to what is best for the public, to some blend of these two roles. How would you characterize the role of a member of the General Assembly? \_\_\_\_\_

\_\_\_\_\_

10. Finally, what do you feel determines whether a bill passes or does not pass? \_\_\_\_\_

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APPENDIX VI  
THE DATA COLLECTION INSTRUMENT

LEGISLATIVE ITEM DATA COLLECTION FORM

City: Chesa Hampton Newport News Norfolk Ports Va Bch

Year included in proposal: 1987 1988 1989

Proposal item:

Amending sec:

Bill Number: HB SB Related bills:

Patron:

Co-patrons:

HOUSE Committees referred to:

1. Y N A

2. Y N A

HOUSE Floor action : 1st 2nd 3rd Y N A

SENATE Committees referred to:

1. Y N A

2. Y N A

SENATE Floor action 1st 2nd 3rd Y N A

Key legislators supporting/opposing bill: (For Against)

(F/A) (F/A) (F/A) (F/A)

Key agencies or offices supporting/opposing bill: (For Against)

(F/A) (F/A)

Key lobbies, interest groups supporting/opposing bill: (For Against)

(F/A) (F/A)

Other variables affecting item:

Outcome of item:

Passed Enacted as intended:

Significantly amended:

Signed by: Speaker Pres of Senate Governor

C.Over Passed one house:

Referred for study:

Failed In Committee:

On floor:

By governor:

BILL # \_\_\_\_\_ Session \_\_\_\_\_

HOUSE

Committee: \_\_\_\_\_ Date: \_\_\_\_\_  
FOR AGAINST ABSTAIN

_____	_____	_____	_____	_____
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Committee: \_\_\_\_\_ Date: \_\_\_\_\_  
FOR AGAINST ABSTAIN

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_____	_____	_____	_____	_____

SENATE

Committee: \_\_\_\_\_ Date: \_\_\_\_\_  
FOR AGAINST ABSTAIN

_____	_____	_____	_____	_____
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Committee: \_\_\_\_\_ Date: \_\_\_\_\_  
FOR AGAINST ABSTAIN

_____	_____	_____	_____	_____
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**APPENDIX VII**

**TABULAR SUMMARY OF INTERVIEW RESULTS**

## APPENDIX VII

### TABULAR SUMMARY OF INTERVIEW RESULTS

In the six Hampton Roads cities I have studied, there are variations in the number of issues presented in the Legislative proposals of the local governments. From your perspective, does a legislative proposal with a few selective issues have a greater likelihood of favorable action than a large, multi-issue package? N = 11

- short lists are better (6)
- background information on the issue helps (1)
- it helps to target a legislator to carry the bill (1)
- longer lists should be presented to the delegation in pre-session briefing (3)
- good solid ideas of merit will be carried regardless of list length (1)
- prioritization of list improves usefulness (2)
- long wish lists are often not realistic (1)
- length of list doesn't matter (1)

In a number of instances found in this study, items in the legislative proposals of localities were never introduced as bills. How do (you as) a member of a delegation, decide what issues to introduce as bills? N = 15

- legislators meet and divide list based on interests and expertise (7)
- senior legislators pick their preferences and junior legislators take the rest (1)
- may not introduce any of local government's proposals; legislators represent a more discreet constituency than city council and know what constituency wants (1)
- if no legislator agrees with an idea, it isn't introduced (1)
- base on what is best for constituency (2)
- support ideas which agree with political philosophy (1)
- base selection on merit of bill (1)
- base on own background and interests (1)
- base selection on likelihood of passage (1)
- support ideas which are supported by other localities (1)
- support ideas which are requested by lobbyists (1)
- support ideas which are put forth by governor's office (1)
- support ideas which the city council appear to have support on (3)
- support bills arising from study resolutions (1)
- support ideas which colleagues in the legislator support (1)
- uncertain (1)

Many proposed bills appear to "rise or fall" through committee actions. How important is the committee in determining the fate of a bill? N = 19

- extremely important, critical, 90% (11)
- a good bill can be killed by a committee (3)
- totally, 98%, 99% (3)
- a bill has a good chance if it survives committees (2)
- most important step (1)
- depends on the committee; can be friendly and unfriendly towards a given issue (5)
- Virginia has a strong committee system (5)
- relatively important, committees in Virginia have high floor success rate (1)
- subcommittee really control the outcome, 5 people, 98% followed (2)

If a legislator feels strongly about a bill which has been passed over, stricken, or otherwise killed by a committee, is there some mechanism to revive that bill? N = 19

- attach to another bill (9)
- move for reconsideration (6)
- not really; no (1)
- ask other chamber (1)
- discharge a committee report (very rare-undermines committees) (3)

How likely is it to work? N = 19

- can work with behind scenes work (4)
- reconsideration is done all the time - need support of committee majority (3)
- depends on the issue (3)
- attachment needs approval of patron (3)
- attachment can work, if germane (4)
- not applicable (no method) (5)

Can you give an example? N = 19

- attempt was made to attach abortion bill to floor bill (2)
- covered truck issue was attached to speed limit bill on floor (3)

What are the informal factors which affect the assignment of members to a committee assignments? N = 19

- make request to Pres pro tem/Speaker, majority leader, or senior member (7)
- based on geographic balance (4)
- political future of members (1)
- express interest to committee chair (2)
- tell Rules Committee chair what you want (1)
- background/qualifications of members (3)
- based on party balance, ask Democratic steering committee (2)
- don't know (1)

How are bills assigned to committee? N = 2

- update Senate rules every four years to assist assignment, very specific (1)
- based on code section (1)
- precedent (1)
- if unsure, Rules Committee decides (2)

The literature on legislative action identifies factors which affect the outcome of a bill. As I list each of these, could you comment on how important feel each is in the Virginia General Assembly: (19)

a) A large number of co-patrons increases the likelihood of a bill's passage.

- yes (11) example -Chesapeake Bay Protection Act
- often true (4)
- depends on co-patrons (unless there's 51), 30 back benchers aren't much help (2)
- not really, no (3)
- diversity of Democrats/Republicans important;state balance less so (1)
- identifies those for and against an issue (1)

b) The status or clout of a bill's patron will affect the passage of a bill.

- yes (18)
- depends on party of patron (1)
- depends on credibility of patron (1)
- helps if its the speaker of a committee chair (2)



c) The support of party leadership can assist a bill in passage.

- yes (14)
- yes, if its a partisan bill (2)
- depends on the partisanship in the chamber, bipartisan don't usually do (1)
- depends on bill (1)
- the "old boys" get what they want (1)
- no (1)
- if the speaker supports a bill, party is irrelevant (1)
- House Republican block can stop a bill (1)

d) The level of staff support for a committee can effect how many bills are processed favorably by the committee.

- yes (4)
- that's why the governor is powerful, legislative support is on a shoestring (1)
- no, not an issue, staffing based on workload (12)
- unsure, don't know (2)
- quality of committee chair and members is more an issue (1)

e) Busier committees are more likely to screen a bill out and not report it to the floor.

- yes (7)
- yes, towards end of session, bills are massacred by busy committees (2)
- yes, Courts of Justice Committee does screen out due to workload (3)
- screening tied to perception of importance of bill by the committee (1)
- no, very little (6)
- no, committees schedule extra meetings to keep up (1)
- all committees are busy anymore (1)
- not necessarily - review back bench bills and bad bills (1)

f) A bill reported favorably by a committee which is well respected by the Assembly is more likely to pass.

- yes (7)
- powerful versus light weight committee - not less respect (3)
- some effect with technical, procedural issues (2)
- no, not necessarily (6)
- unsure (1)

g) A bill with split committee vote is less likely to pass .

- yes (11)
- can lead to a floor fight if those opposed in committee speak out (3)
- depends on who voted which way, Republican "nays" don't doom (3)
- party line sails through
- probably was a controversial bill and the vote is an indicator of that

h) When no interest groups or agencies show support for a bill, it is more likely to be postponed.

- yes (8)
- if the committee thinks there is unexpressed interest, they'll delay (1)
- depends on who is the patron (1)
- not necessarily, no (6)
- no, support may exist by coalition (1)
- no, good ideas go through, humanitarian bills go through (2)
- no, code amendments rarely have interest group support and pass (1)

i) Five or more interest groups showing support for a bill increases the likelihood of passage. Conversely, an equal number speaking against it will decrease likelihood of passage.

- yes (6)
- written campaign affects, people who write also vote (3)
- interest groups are vital, have expertise, hire the best (2)

- personality of the lobbyist affects (1)
- interest groups horse trade, advocate, and lobby (1)
- contributors to legislators are heard (1)
- national networks are particularly effective (1)
- depends more on who the groups are, their power and persuasiveness (9)
- depends on the issue (4)
- not necessarily but more groups ensure that more hearing is given an issue (1)
- more interest groups mean both sides of an issue will be heard (1)
- unsure (2)
- there are too many interest groups now -they descend on the Capitol (1)

j) An item placed before the legislature as part of the governor's budget is more likely to be passed.

- yes, absolutely (16)
- can't overemphasize governor's power in Virginia (1)
- depends on the governor's strength/ standing (3)

k) Legislative elections affect which bills will pass in a given year.

- yes (15)
- taxes and abortion aren't taken up in an election year (4)
- not as strong as might think (1)
- some bills are introduced to campaign on (2)
- sometimes (2)
- not in the House - they are always running for re-election with 2 year term (1)

l) A bill concerning an issue for which a study has been completed is more likely to pass when the study results become available.

- yes (10)
- makes more comfortable if there was uncertainty (3)
- yes, if the bill comes from the study (1)
- yes, you've got the study committee votes behind it (1)
- yes, gets more people involved and behind a bill, builds consensus (2)
- yes, defer to experts, may help fine tune an issue (2)
- yes, takes away option to study, particularly in technical areas (1)
- not necessarily, depends on issue, didn't help TDR's (5)
- not necessarily, study gives the opposition time to organize (1)
- there are too many studies done by outside agencies anymore (1)
- no, some studies are undertaken to kill or delay an issue (2)

Are there other factors which you feel play a key role in the passage or failure of a bill? N = 18

- public opinion (e.g., gun bill in 1989) (2)
- whether its fiscally prudent (3)
- substance of bill, reasonable, necessary (3)
- outside events (e.g., jet ski accidents) (1)
- other political actions in the legislature, partisan politics, rep get killed (2)
- the right number of votes (2)
- whether the speaker wants it (1)
- whether the governor wants it (2)
- committee assignment, chair can make high profile (2)
- sensitivity of bill (1)
- coalitions of legislators (1)
- timing of bill (e.g., no money in 1991 did many in) (2)
- corporate lobbyists (power companies, VML, VACO) (2)
- publicity on issue, press coverage (2)
- property rights threat (1)
- whether it will create more bureaucracy (1)
- presence of referendum from general electorate (lottery/horse racing) (1)
- presentation made by patron and quality of background information provided (1)
- no, you've covered it all (5)

When several bills propose different legislation surrounding the same issue, the bill with the narrowest grant of power or impact on fewest localities appears to be most likely to pass. In your view, is this generally true? N = 19

- usually true (8)
- if the local delegation is behind, may go through regardless (1)
- sure, its the easy way out, simple (1)
- keeps the code tight, narrow grant of power (4)
- yes, reflects concern with precedent setting; env issues can affect other areas (1)
- yes, causes less resistance, fewer people to appease (2)
- yes, start small; expand and refine in later years; e.g., family life, recycling(1)
- when this is a factor, it is not tied to a specific issue area; e.g., meal tax (1)
- depends somewhat on party and seniority of patron (5)
- depends on agency supporting and studies done on issue (1)
- depends on who's goose is being cooked, lobbyists watch these carefully (1)
- not necessarily, can't generalize (3)
- no (1)
- unsure; not qualified to answer (2)

In this study, I focused on environmental issues proposed by the cities of Hampton Roads over the past three years. As I list each of the issue areas, would you recall what were the critical factors which affected the outcome of the proposal? N = 5

a) Erosion and sediment control penalties

- rural concern with soil erosion (1)
- concern with ground water contamination, aquatic life, water quality (2)
- don't recall/ didn't work with issue (3)
- builders fought it (1)
- Senator Gartlan's support (1)
- bill needed fine tuning after some experience (1)

b) Ban of Phosphate Detergents

- legislators supported, best thing we've done environmentally, tied to Bay issue (2)
- don't recall/ didn't work with issue (1)
- would not pass today, too narrow, limited affect (1)
- northern Virginia localities introduce all kinds of ideas they get from Maryland and other nearby states (1)
- technology was available to make viable (1)
- study had been completed on issue to help legislators understand issue (1)

c) Tree Protection

- citizen support (1)
- took so long due to developer concerns, builders opposed (2)
- don't recall/ didn't work with issue (3)
- environmentalists could have illicited media support but failed to do so (1)
- hard to kill an environmental bill in today's political environment (1)
- nursery people supported (1)

d) Stop Work Orders for wetlands protection

- concern about adjudication and provision of relief through the courts (1)
- don't recall/ didn't work with issue (3)
- Tayloe Murphy and Gartlan supported (1)
- presentation with slides of filled areas done (1)
- private property rights concerns (1)
- tied to Bay issues is general (1)

e) Amendment of Chesapeake Bay Preservation Act

- local government concerns led to local hearings (1)
- local authority sought by localities (1)
- set up local advisory committees with chain of authority to state (1)

- name of the act was like "mom and apple pie", who would vote against (1)
- governor opposed proposed amendments (3)
- was an honest fight to amend (1)
- don't recall, didn't work with issue (1)
- intention of financing requirements was an attempt to kill Act's intent (1)
- patron just couldn't generate interest in amendments (1)

f) Non tidal wetlands regulations

- don't recall, didn't work with issue (4)
- was part of 1988 national presidential campaign ("no net loss") (1)
- property rights concern (1)
- what is a non-tidal wetland? definition is confusing (1)
- Senate Committee on Agriculture, Conservation, and Natural Resources kills everything bills which limits land /farm use (1)
- let the Army Corps deal with it (1)

g) State wide recycling objectives

- originally killed in committee due to industry concern over cost to fast food businesses needing extra employees to implement (1)
- don't recall, didn't work with issue (2)
- Chamber of Commerce opposed business inclusion (1)
- localities bear burden but hard to oppose due to environmental concerns (1)
- landfill limitations a concern, need an alternative (1)
- three year study with Quillen and Walker involved, included balanced panel of citizen activists and industry representatives (1)
- governor's office supported (1)
- bottle bill patroned by Marye year after year, no progress (1)

h) Transferable Development Rights

- future generations are tied (1)
- don't recall, didn't work with issue (3)
- concerned about unintended consequences (1)
- question of constitutionality (1)
- very complex issue (2)
- study done on issue (1)
- of interest to northern Virginia and Hampton Roads (1)
- Maryland has system in place - provides some precedent (1)

Was there strong interest group action for or against each of these issues?

a) Erosion and sediment control penalties

- developers/builders opposed (2)

b) Ban of Phosphate Detergents

- sports and motor boats groups supported (1)
- governor supported (1)
- environmental groups (1)

c) Tree Protection

- don't recall, didn't work with issue (2)
- builders opposed (2)
- environmentalists supported (3)
- nursery people supported (1)
- garden clubs supported (1)

d) Stop Work Orders for wetlands protection

- developers opposed (1)
- environmental groups supported (1)

## e) Amendment of Chesapeake Bay Preservation Act

- environmental groups supported bill and opposed amendments (2)
- administration supported bill, opposed amendments (2)

## f) Non tidal wetlands regulations

- don't recall (2)
- environmental groups supported (2)
- builders opposed (1)
- farmers opposed (1)

## g) State wide recycling objectives

- legislators and local government supported due to land fill concerns (1)
- don't recall, didn't work with issue (1)
- Chamber of Commerce opposed for businesses (1)
- industry opposed (1)
- some citizen advocates for issue (1)

## h) Transferable Development Rights

- key legislators opposed, won't pass until a couple key people retire (1)
- don't recall, didn't work with issue (2)
- environmentalists, builders, and realtors are proactive on issue (1)

Research tells us that the person who sets the agenda can heavily impact the outcome of a bill. Do you feel that agenda control significantly affects the outcome of bills? N = 18

- yes, control germaneness and bill referral (friendly/unfriendly) (5)
- yes, can delay a bill being taken up, usually due to workload or controversy (4)
- agenda setter can remove from bloc in senate (1)
- in last ten days, more control due to crush of bills (2)
- yes, regarding floor maneuvering, timing, skills in floor debate (1)
- committees set their agendas, chairs have considerable power to control (6)
- committee chair use of subcommittee affects bills (1)
- limited, sometimes (1)
- much less so than in Congress (2)
- no, clerk manages in Senate, handled in order presented (2)
- no, speaker has little control, handled when presented (4)

Research tells us the some legislators support certain bills in order to gain other legislators votes for other bills of interest. Do you feel this sort of voting is a major factor in floor votes? N = 16

- yes (7)
- yes, but only on items which are not matters of conscience (1)
- more so in final days of session (1)
- yes, but not planned, friends help friends (1)
- yes, help those who help you, gentlemen's agreements to help where can, "favor bank" (6)
- yes, but concern is with final vote record and interim votes are more important (1)
- not as much as in Congress (2)
- not too much, occasionally (4)
- no (1)
- don't know (1)

The role of a legislator has been described variously as fulfilling the dictates of the public, to exercising personal judgement as to what is best for the public, to some blend of these two roles. How would you characterize the role of a member of the General Assembly? N = 17

- represent constituency, those that last represent constituency, will be ex-legislator if don't represent constituency (5)
- citizen legislators can stay close to constituency, no staff to insulate (1)
- with transient population, hard to know constituency; polls aren't a good indicator, only

- disgruntled respond; don't poll often so limited use (6)
- its a blend of both (4)
- on complex, technical issues, public aren't informed so do what think is best; on more visible, public issues, represent constituency (1)
- vote conscience, do what's right, what's best for everyone (4)
- depends on issue, technical issues require judgements (2)
- do what's best for locality; if don't know constituency preference, ask local government (2)
- varies, redistricting restricts view to small constituency (1)
- no response (1)

Finally, what do you feel determines whether a bill passes or does not pass?N = 16

- whether a bill is good or needed, merit, good idea (5)
- whether the bill is well thought out, makes sense (2)
- number of votes (1)
- lobbyists/ advocates (2)
- 15 bills have a lot of action each year and the rest are ho-hum (1)
- all the things above and the merit of the bill (4)
- political style of the speaker (1)
- popularity of issues are cyclical, depends on cycle (1)
- no one thing, a little of everything (5)
- what is best for the largest segment of the population (2)
- friendships, power coalitions (1)
- media attention can push an issue one way or another (2)
- legislature is still conservative (1)
- role of governor (1)
- don't know (1)

#### AUTOBIOGRAPHICAL STATEMENT

Betty Jean Meyer was born in Beaufort, South Carolina on May 23, 1952. She received her Bachelor of Science degree in Biology from Old Dominion University in 1974 and her Masters of Public Administration from Old Dominion University in 1979.

She has been active in state and local government in Virginia and has held numerous positions on boards of community organizations, including service on the Board of Directors of the Hampton Roads Chapter of the American Society for Public Administration, the Virginia Environmental Health Association, and the Virginia Chapter of the Central Atlantic States Association of Food and Drug Administrators. She is a member of Pi Alpha Alpha, served on the Tidewater Perinatal Task Force, and served on the Human Services committee of Governor Baliles' Commission on Federal Reductions to Domestic Funding. She currently serves on the Virginia Municipal League ad hoc advisory committee to JLARC on state mandates, and represents the Virginia Municipal League on the Secretary of Human Services Committee on Primary Care Needs in Virginia.